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Social justice for sex trafficked females and sex workers in Jordan

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**SOCIAL JUSTICE FOR SEX TRAFFICKED FEMALES AND SEX
WORKERS IN JORDAN**

This thesis is presented for the degree of
Doctor of Philosophy

Nora Tawfiq Samoudi (Dekaidek)

Edith Cowan University
School of Business & Law

2018

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The Use of Thesis statement is not included in this version of the thesis.

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Published conference paper

Nora Samoudi and Ann-Claire Larsen, 'Exploring feminist concerns in a cultural context: The voices of service providers for sex trafficked females in Jordan' (Paper presented at 3rd KANITA Postgraduate International Conference on Gender Studies, Malaysia, 16-17 November 2016) 317. < http://eprints.usm.my/31323/1/Nora_Samoudi.pdf >

ABSTRACT

This thesis explores social practices, policies and laws constituting criminal and social justice approaches to providing services and amenities for the sex trafficked females in Jordan. As the discussion of sex trafficked females overlaps with sex workers, this research explores the human rights of both groups who experience different forms of gender-based violence. To understand the protection, care and support that Jordan provides, I interviewed seven service providers offering protection for victims of sex trafficking. Also, I analysed the semi-prohibitionist Jordanian Penal Code and the Human Trafficking Legislation that criminalise sex trafficking perpetrators and sex-related actions. This research relies on insights from intersectionality theory to enquire into how better to protect and support women who face intersecting social disadvantages and the threat of honour-based killing that impede them from accessing social and criminal justice. This thesis explores three themes, cultural context, feminism and human rights, and argues for social justice for sex trafficked victims and sex workers including those who neither want to exit sex work nor raise a complaint to the administrators of criminal justice. This thesis found that sex trafficked victims and sex workers were not offered appropriate assistance as the service providers were disempowered. It also found that failure to understand honour and morality reinforces the stereotyping of sex workers.

Abbreviations and frequently used terms

1. Abbreviations

CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women

CID: Criminal Investigation Directorate (Jordanian Criminal Justice Administration)

CTU: Counter-Trafficking Unit (Jordanian Criminal Justice Administration)

CDA: Critical Discourse Analysis

DHAA: *Disorderly Houses Amendments Act*

GR: General Recommendation

HREC: Human Research Ethics Committee

HTL: Human Trafficking Legislation (Jordanian legislation)

IDF: Ideological-Discursive Formation

ICCPR: International Covenant on Civil and Political Rights

IHRL: International Human Rights Law

ILO: International Labour Organisation

JPC: Jordanian Penal Code

LEC: Land and Environment Court

MENA: Middle East and North Africa

MOU: Memorandum of Understanding

MSED: Ministry of Economic and Social Development

NGO: Non-Governmental Organisation

NSW: New South Wales

UK: United Kingdom

UN: United Nations

UNODC: United Nations Office of Drugs and Crime

UNGA: United Nations General Assembly

UNSG: United Nations Secretary-General

US: United States of America

WA: Western Australia

2. Short titles

Bill of Human Rights: Bill stands for three international documents; they are the International Covenant for Civil and Political Rights, the International Covenant for Economic Social and Cultural Rights and the Universal Declaration of Human Rights.

Trafficking Protocol: United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes.

Trafficking Principles and Guidelines: Recommended Principles and Guidelines on Human Rights and Human Trafficking.

3. Glossary of terms

Arabic terms from findings and analysis

Al sett el kebireh: The old grandmother, the head of a matriarchal order. The woman who has married sons and grandchildren, and she advises her sons and grandchildren in family matters.

Ardh: Physical honour

Baghaa': Prostitution

Baghiya: Prostitute

Bint\banat: In the Arabic language, bint means a young girl; in customs and traditions of the Middle East, bint is a virgin, regardless of age. Banat is plural of bint.

Dallaleh\khattabeh: A marriage broker. A dallaleh or a khattabeh is a cultural nickname given to an old women who is knowledgeable about single females in a city or village; she provides the assistance for the future husband or the future mother in law in looking for a bride. The assistance in looking for a bride is either in return for money or for free, depending on the customs in her town, village or country.

Hassab: The good prestige of a family or tribe. The prestige may reassemble the number of males, money, honour and reputation.

Hijab: An Islamic dress that is worn by Muslim women, which covers her body excluding the face and hands.

Kafeel: A sponsor. Kafeel may refer to any person including a working agent who sponsors the migrating worker in another country. The sponsor may also have the duty of requesting the visa arrangements for the foreign worker.

Kholo'a: A petition made by the wife who requests a divorce from her husband. For the divorce to take effect, the woman is ought to return the given mahur.

Maghreb: Sunset

Mahur: A value or a gift given to the bride upon marrying her. The customs of a village city or country defines the customary rules regulating the amount of mahur; however, the bride and her family has the right to decide the value of the mahur.

Mara: In certain Arabic dialects in the Middle East, mara refers to a mature woman. It is also used to describe any female who lost her virginity before or after marriage, regardless of her age.

Mo'akhar: The part of mahur that is usually not due to be paid upon marriage. The husband is not obliged to pay the mo'akhar unless requested by the wife or upon husband's divorce of his wife. The Mo'akhar is a custom that was established to keep the wife married and avoid divorce.

Mojalaset al zaba'en: sitting with the customers. It refers to the artists working in a nightclub or a cabaret by sitting with the customers of the nightclub as a form of work.

Nafaqat: in Arabic language, it means expenses or stipend. In Shariaa'law, it refers to the stipend that the husband ought to provide his wife and his sons\ daughters who are under the age of 18. The Nafaqat is a Shari'a law term used in courts to refer to a request made by the wife against the divorced ex-husband to provide a stipend for their sons and daughters.

Orfi: Soft law, or customary law. This thesis refers to the orfi marriage, which is the marriage that is unwritten or unapproved by civil or religious courts.

Seegha: The golden jewellery given to the bride as part of her mahur.

Sharaf: Honour\reputation.

Sharif: An honourable man.

Sharifa: An honourable female.

Sharafha: Her honour.

Sheikh: An old man or a religious leader. In this thesis, it is a name of a person who is authorised by the Sharia' Courts to arrange legally binding marriages for Muslims.

Wasmest al 'aar: The mark or the stigma of shame.

English terms

In the following, I included terms that were explicitly used to have a particular meaning for this thesis.

Artist: in this thesis, the artist refers to women that work in nightclubs, belly-dancing cabarets by providing dancing acrobats and other sexual commodities for clients attending the nightclub or cabaret.

Anti-categorical: an approach to analyzing the intersections of discrimination, by deconstructing the categories of discrimination, and reconstructing the understanding of discrimination from the studied context.

Arab Gulf: Arab Countries located in the Arab Gulf region.

Actus reus: Actions of the perpetrator, which complete the other elements of a crime.

Cabaret: in this thesis, a cabaret refers to the artists, which perform belly-dancing for customers. Belly-dancing cabarets are popular in countries of the Middle East.

Dar al baghaa: house of prostitution, known in English as a brothel.

Deception of good intention: it refers to the act of misleading or tricking a female, by claiming that a person is willing to marry her and love her.

Good intention to marry: The intention of a lover or a fiancé to marry a girl.

Hospitality establishment: The hospitality establishment stands for the hospitality premises that I stayed at in Jordan. I prefer not to define whether it was a hostel, a motel, a hotel or short-stays apartments for confidentiality.

Nightclub: in the cases study, a nightclub refers to a bar, a nightclub or a belly dancing cabaret, used to entertain the customers. Entertaining the customers may include belling dancing, acrobat or other intimate relationships with the females who work at the nightclub.

Service Providers: Government or non-government persons who supply victims of gender-based violence and sex trafficking with amenities, sheltering options counselling services for helping them exit the exploitative environment. The services may include health, social, psychological, legal, financial services. The service providers may include criminal justice staff that provide protective measures and rescue missions.

Sex worker: a sex worker in the cases study refers to women and girls who work in the nightclub industry, brothels and private premises for providing sexual services. Sexual services are not limited to sexual intercourse; it may also include sitting with the customers, kissing, stripping or other sexual entertainment to be provided for the customers of nightclubs or brothels.

Sharia' Courts: are Jordanian courts that enforce the Jordanian Personal law (family law). Shari'a courts regulate family matters of Muslims, including matrimonial regulations, custody, fostering, heritage and wills.

Summer marriages: temporary marriages that are usually popular in the summertime. The temporary marriage is a contract between the temporary groom and the parents of the bride, the bride, the marriage broker, or the pimp. The groom pays an amount of money in return for marrying the bride for a few days, weeks or months. The purpose of the temporary marriage is to avoid social scrutiny or prosecution for sex outside marriage.

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II INTRODUCTION

Before introducing the problem of sex trafficking from a worldwide perspective, and cultural-specific dimensions of sex trafficking and sex work in Jordan, I provide an inclusive definition of sex trafficking. Sex trafficking is the sexual exploitation of a person for personal or profit purposes by context-specific means that could influence the mentality of that person to submit to the will of the exploiter. To what extent is sex trafficking operating in the world? What is the specific cultural significance of sex trafficking, and possibly sex work exploitation in Jordan? These questions are given general answers in the following before I introduce the main thesis question, my observations and the research design.

Sex Trafficking in Numbers: a Billion Dollar Business: International and contextual significance

Sex trafficking, worldwide, reached alarming proportions during the last two decades. In 2005, the International Labour Organisation (ILO) estimated there were 2.5 million victims of human trafficking; two-thirds of these victims were women and children used for sexual exploitation.¹ According to the 2007 Trafficking in Persons (TIP) report, sex trafficking comprised the largest subcategory of transnational trafficking in persons.² In 2012, the United Nations Office of Drugs and Crime global reporting human trafficking concluded that the number of trafficked victims, including those involved in forced labour and sexual exploitation, reached 20.9 million.³ It also concluded that 70 percent of these were females who fell within the sex trafficking victim

¹ Louise I Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press, 2010) 6.

² US Department of State, 'Trafficking in Persons Report' (U.S. Department of State, 2007) <<https://www.state.gov/documents/organization/82902.pdf>>.

³ UNODC, 'Global Report on Trafficking in Persons' (UNODC, 2012) <http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf>.

estimations.⁴ Another estimation showed that 27 million people were sex trafficked victims, most of whom were more likely girls and women, often aged between 12 and 16 years.⁵ These figures suggest that women and children are the most harmed by this new phase of globalisation.⁶ Thus, women and girls are disadvantaged through gender-based discrimination.

From a profit-motive perspective, traffickers have benefited from the globalisation of sex trafficking crimes. The demand for and supply of sex workers are key determinants of the profitability of the global sex trade.⁷ Sex trafficking has become the second most profitable transnational organised crime.⁸ The annual global profit from trafficking in persons is over US\$32 billion.⁹ Further, in 1998, the ILO found that commercial sex in Malaysia, Philippines, Indonesia and Thailand ranged from 2 to 14 percent of the value of economic output. The Philippines Government had been training sex workers before they left the country for sex work, knowing that sex workers remit their wages to their families in the Philippines.¹⁰

According to Jeffreys, commercial sex benefits have been found in Europe too.¹¹ For instance, after the decriminalisation of prostitution in the Netherlands in 2001, it was estimated that legalised prostitution accounted for 5 percent of the total national gross domestic product (GDP).¹² For Jeffreys, brothels became a profitable 'market sector' in countries such as Australia, the Netherlands, Germany and New Zealand; whereas, in countries where sex work

⁴ Ibid.

⁵ Mary Chesnay, *Sex Trafficking: A Clinical Guide for Nurses*, (Springer Publishing Company, 2012).

⁶ Shelley, above n 1, 17.

⁷ Ibid 3; see Kathleen Barry, *Prostitution of Sexuality* (New York University Press, 1995) 122.

⁸ The first most profitable transnational organised crime is the trade of drugs, second is human trafficking and third is the trade of arms. Ibid 6.

⁹ Chesnay, above n 5.

¹⁰ Sheila Jeffreys, *The Industrial Vagina: The Political Economy of the Global Sex Trade* (Routledge, 2009) 5.

¹¹ Ibid.

¹² Ibid 4-5.

remained illegal, it was a profitable market sector of organised criminal activities.¹³ Voluntary or consensual sex work has been a matter of debate in the literature on sex trafficking crimes. For instance, Jeffreys referred to all forms of prostitution or sex work, whether freely chosen or forced, as forms of sex trafficking crimes.¹⁴ Another debate in the literature is about whether consensual sex work is a matter of free choice by the sex worker, and Dempsey's paper discusses the criminal culpability of the customers who buy sex.¹⁵ This thesis explores the differences and connections between forced sex work and voluntary sex work in light of the crimes of sex trafficking and sexual exploitation.

One significant development, which indicates the size of the problem, is that the unprecedented flow of migrants to places like Europe and elsewhere may be associated with non-confirmed sex trafficking cases. This situation occurs because victims do not tend to seek help from the authorities and do not self-identify as victims.¹⁶

Though profits for sex trafficking have been higher than other forms of human trafficking,¹⁷ the crime remains largely hidden or undetected by the criminal justice authorities. Governments need information about the context of sex trafficking to understand what contributes to bringing the perpetrators to justice and protecting victims of human trafficking.

This issue becomes harder knowing that the reports on statistics and potential profit from sex trafficking remain unknown. The reports and statistics on sex trafficking might be deluded or serving an interest of a government, or an NGO that supports specific treatment and definitions

¹³ Ibid.

¹⁴ Ibid 8–9.

¹⁵ See Michelle Madden Dempsey, 'Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism' (2010) 158(6) *University of Pennsylvania Law Review* 1729.

¹⁶ US Department of State, *Trafficking in Persons Report* (U.S. Department of State Publication, 2016).

¹⁷ Shelley, above n 1, 6.

of sex trafficking.¹⁸ For instance, several papers have questioned the US annual TIP report in regards to the methodology and quality of tools used in gathering data.¹⁹

It is vital to focus on the contextual significance of dubious reports. This research relies on the social-scientific research methods to understand the extent to which sex trafficking might exist in Jordan. Before explaining the scope of this research and the main thesis question, I introduce the significance of this research for Jordan.

A *Introducing the research and its significance to Jordan*

Jordan is considered a transit and destination country for the trafficking of persons.²⁰ Many Syrian refugees have fled the war and escaped to Jordan. According to the 2016 national census in Jordan, non-Jordanians represent 30.6 percent of the population in Jordan.²¹ Further, the 2016 TIP report asserted that Syrian refugees were vulnerable to trafficking due to their financial status.²² There has been an escalation in incidents of early marriages among the Syrian refugees, which might increase the risk of the girl-child to sexual exploitation. However, given refugees' critical situation, Jordan has allowed Syrians to get labour permits since March 2016.²³

¹⁸ See Global Alliance Against Traffic in Women (GAATW), 'Re: Trafficking in Persons Report June 2008' Letter submitted to US Secretary of State, July 2008. < http://www.gaatw.org/statements/TIP_Letter_FINAL.pdf >

¹⁹ See Anne T Gallagher, 'Improving the Effectiveness of International Law of Human Trafficking: A Vision for the Future of the US Trafficking in Persons Report' (2011) 12(3) *Human Rights Review* 381.

²⁰ US Department of State *Trafficking in Persons Report*, (U.S. Department of State Publication, 2016), 220.

²¹ Mohammad Ghazal, 'Population Stands at around 9.5 Million, Including 2.9 Million Guests', *The Jordan Times* (online) (Jordan), 3 January 2016 <http://www.jordantimes.com/news/local/population-stands-around-95-million-including-29-million-guests>

²² US Department of State *Trafficking in Persons Report*, (U.S. Department of State Publication, 2016), 220.; see also Claire Healy, 'Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons; A Study of Syrian, Turkey, Lebanon, Jordan and Iraq' (Research Paper, International Centre for Migration Policy Development, December 2015).

²³ *Ibid.*

The 2014 TIP report cited stories of Egyptian females who married men in Jordan, but were then exploited by their husbands for profit via forcing them to beg or enter prostitution.²⁴ The 2016 Special Rapporteur's Trafficking in Persons Report on Jordan referred to women who had been promised work in Jordan via working agencies or boyfriends, but later were forced into sex work; it mentioned cases of Tunisian women who were deceived about the type of work they would perform in Jordan.²⁵ Furthermore, the TIP Report contended that women in Jordan who worked in nightclubs were likely to be exploited or forced to do sex work.²⁶ According to the Report, women who worked in nightclubs included women from Jordan, Syria, Lebanon, North Africa and Eastern Europe. Moreover, the TIP Report also stated that a few domestic labourers originated from Asian countries such as Indonesia, Philippines, Sri Lanka and Bangladesh who were sex trafficked after fleeing from their employers.²⁷ All these examples show that the means used to traffic the victims relied on impoverished women's vulnerability. The complex situation in Jordan required that I pay attention to what was happening concerning sex trafficked victims in continuously changing circumstances.

Honour is a matter that intersects with the problem of sex trafficking of females, especially in the Middle East. According to a 2013 paper published by the ILO, some of the victims in the Middle East had been too frightened to leave the industry for fear that the perpetrators would tell their

²⁴ Ibid.

²⁵ US Department of State *Trafficking in Persons Report*, (U.S. Department of State Publication, 2016), 374; UNCHR, *Report of the Special Rapporteur Trafficking in Persons, Especially Women and Children, on Her Mission to Jordan*, 32nd sess, UN Doc A/HRC/32/41/Add.1 (8 June 2016).

²⁶ UNCHR, *Report of the Special Rapporteur Trafficking in Persons, Especially Women and Children, on Her Mission to Jordan*, 32nd sess, UN Doc A/HRC/32/41/Add.1 (8 June 2016); UNHCR, *Jordan: UN Rights Expert Calls for the Prevention of Trafficking by Improving Working Conditions for Jordanians, Migrants and Refugees* (4 February 2016) UNCHR Office of the High Commissioner, Display News <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17011&LangID=E>> .

²⁷ US Department of State *Trafficking in Persons Report*, (U.S. Department of State Publication, 2016), 220.

families about their employment.²⁸ In the Middle East, a woman who has sexual intercourse outside marriage is considered to have lost her honour. As a consequence, she may either be killed or abandoned by her family.²⁹ Accordingly, some of the sex trafficked victims have little choice but to continue doing sex work because of social stigma and not having anywhere else to go. These points are crucial for this thesis, given their influence on the agency of females who perform sex work.

The war in Syria has created layers of disadvantage for women, resulting in them being extremely vulnerable to trafficking in the region (the Middle East and neighbouring countries).³⁰ With an update on February 2017, The United Nations Refugee Agency database estimated that the number of Syrian refugees in Jordan had reached 656,170 persons.³¹ In Jordan's capital Amman, the number of Syrian refugees had reached 176,419 persons.³² The Mafraq Governorate (which has the largest of the proportions and includes the city of Mafraq and Za'atari village camp, north Jordan) included about 158,643 Syrian refugees. Figure 1-1 shows the proportions of Syrian refugees in Jordan by area. According to the report of the Special Rapporteur trafficking in Persons, around 50.7 percent of Syrian refugees and asylum seekers were females.³³

²⁸ Helene Haroff-Tavel and Alix Nasri, 'Tricked and Trapped: Human Trafficking in the Middle East' (International Labour Organisation, 2013) <http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_211214.pdf>.

²⁹ Regarding honour based crimes, see Floya Anthias, 'The Intersections of Class, Gender, Sexuality and "Race": The Political Economy of Gendered Violence' (2014) 27(2) *International Journal of Politics, Culture, and Society* 153.

Healy, above n 22.

³¹ UNHCR, The UN Refugee Agency, *Syria Regional Refugee Response: Inter-Agency Information Sharing Portal* (16 February 2017) UNHCR The UN Refugee Agency <<http://data.unhcr.org/syrianrefugees/country.php?id=107>>.

³² Ibid.

³³ UNCHR, *Report of the Special Rapporteur Trafficking in Persons, Especially Women and Children, on Her Mission to Jordan*, 32nd sess, UN Doc A/HRC/32/41/Add.1 (8 June 2016), para 6.

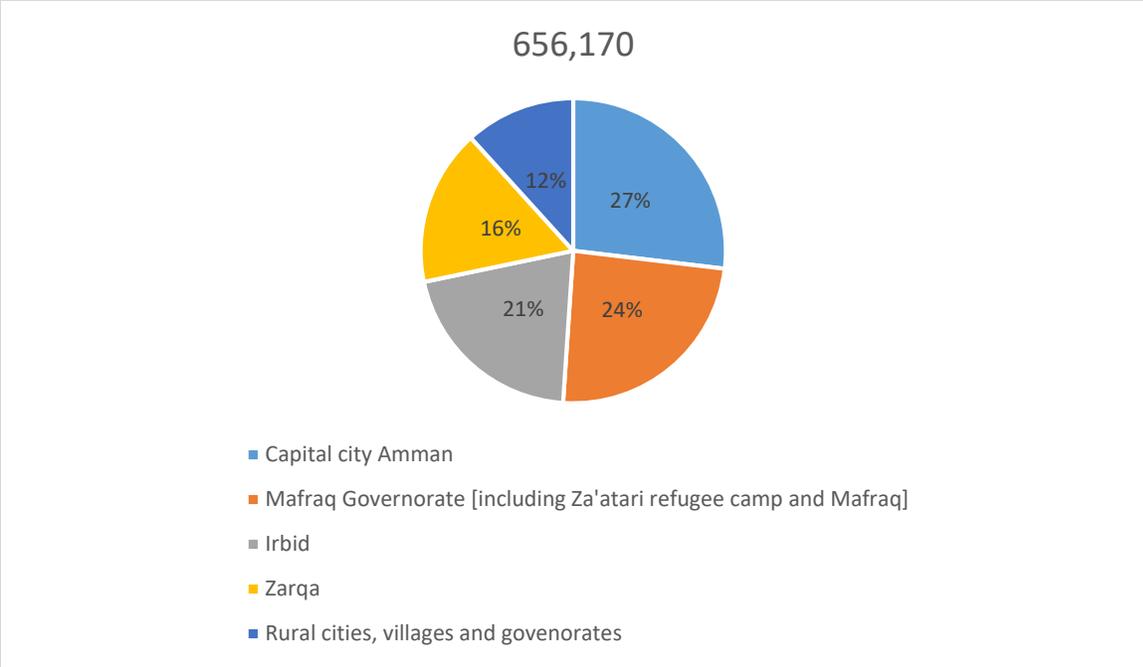


Figure 1-1 UN refugee agency statistics of Syrian refugees in Jordan in 2017

With the alarming rates of refugees in Jordan, a 2013 study by Mercy Corps focused on the social, cultural and economic dilemmas that both local Jordanian communities and Syrian refugees endured in the northern local Governorates of Mafraq, Sahel Houran and Ramtha.³⁴ In the Mercy Corps study, 100 Syrian refugees and Jordanian locals were interviewed. The Mercy Corps study explained how Syrians are exploited as cheap labour, causing an increase in unemployment of Jordanians. The rise in numbers of refugees in the northern governorates and villages was associated with language and power positions, which were confirmed by the participants of the Mercy Corps study.³⁵ Some of the participants of the Mercy Corps study

³⁴ *Mapping of Host Community-Refugee Tensions in Mafraq and Ramtha, Jordan* (Mercy corps, March 2013 ed, 2013).

³⁵ See Ibid.

accused Syrian refugee women of becoming ‘prostitutes’.³⁶ This study showed the language and discourse of both parties regarding their distress about the situation.

Why are these dynamics relevant to my research question? I believe issues regarding sex work are interrelated with the issue of sex trafficking in Jordan. These two topics confirm the importance of understanding the social interactions between Jordanian and non-Jordanian people.

According to a worldwide report from the International Organisation for Migration (IOM), traffickers misuse people, who are classified as dependent on humanitarian support, to develop their criminal activities by using deception or exploitation.³⁷ For instance, the 2016 TIP report included a case about Angela, a Syrian female who was subjected to sex trafficking in Lebanon with 70 other women and girls, most of whom were Syrian.³⁸ The perpetrators had come to Angela’s village to invite young girls to work in the hospitality industry in Lebanon. The girls who accepted this ‘invitation’ were then forced to do sex work in locked hotel rooms for two months. The women and girls faced violence and were raped as they were subjected to the will of the perpetrators.³⁹ Kathleen Barry, a well-known feminist abolitionist, explains that refugee women and girls might endure rape and be exploited in the sex industries by pimps and organised criminal groups, knowing that their families would shun them.⁴⁰

³⁶ Ibid.

³⁷ Sarah Craggs, *Addressing Human Trafficking and Exploitation in Times of Crisis: Evidence and Recommendations for Further Action to Protect Vulnerable and Mobile Populations* (July 2015) <https://www.iom.int/sites/default/files/press_release/file/CT_in_Crisis_FINAL.pdf>.

³⁸ Women’s eNews, *Syrian Women’s Lives in Jordan: Hala Works in Bars at Night* (26 December 2013) Youtube <<https://www.youtube.com/watch?v=2Od2ALkdOsI>> ; see Dominique Soguel, *Syrian Women in Jordan Face Economics of Survival* (29 December 2013) Women’s eNews, *Covering Women’s Issues Changing Women’s Lives* <<http://womensenews.org/2013/12/syrian-women-in-jordan-face-economics-survival/>>

³⁹ US Department of State *Trafficking in Persons Report*, (U.S. Department of State Publication, 2016), 331.

⁴⁰ Barry, above n 7, 124.

According to the 2016 Special Rapporteur's Trafficking in Persons Report, a Syrian refugee girl-child was forced into 13 temporary marriages as a form of sexual services; each marriage lasted between one day to one month.⁴¹ The customers, or the temporary husbands, included men from Jordan and Arab Gulf countries. The perpetrators involved in sexually exploiting this 17 year old child were the traffickers, her single mother, a family friend and the doctor who performed hymen-repair surgery on the child each time she was married.⁴²

Another example of deception can be found in a 2013 interview reported by the non-profit online news service Women's eNews in their website and with an uploaded interview on their YouTube channel.⁴³ Here a Syrian woman named Halaa, who used to work in the Syrian governmental administration, was reported to have fled to Jordan from the war in Syria, leaving her ill mother and young son behind.⁴⁴ She was unable to find a job in Jordan to financially support her son and mother. At the time of her interview with Women's eNews, Halaa was working at night in bars and working with customers. The type of night work was not clear in the uploaded interview, but she complained about how she had to do the kind of work that she does not like performing and that she wanted to get married to exit the night work. Halaa explained how she married a Palestinian man who was already married and had children in Palestine. The husband asked her to leave her night work at bars and to delete her customers' contact details from her phone so he

⁴¹ UNCHR, *Report of the Special Rapporteur Trafficking in Persons, Especially Women and Children, on Her Mission to Jordan*, 32nd sess, UN Doc A/HRC/32/41/Add.1 (8 June 2016)3, para 18.

⁴² Ibid.

⁴³ Women's eNews, *Syrian Women's Lives in Jordan: Halaa Works in Bars at Night* (26 December 2013) Youtube < <https://www.youtube.com/watch?v=2Od2ALkdOsI> > ; see Dominique Soguel, *Syrian Women in Jordan Face Economics of Survival* (29 December 2013) Women's eNews, *Covering Women's Issues Changing Women's Lives* < <http://womensenews.org/2013/12/syrian-women-in-jordan-face-economics-survival/> >

⁴⁴ Women's eNews, *Syrian Women's Lives in Jordan: Halaa Works in Bars at Night* (26 December 2013) Youtube < <https://www.youtube.com/watch?v=2Od2ALkdOsI> > ; see Dominique Soguel, *Syrian Women in Jordan Face Economics of Survival* (29 December 2013) Women's eNews, *Covering Women's Issues Changing Women's Lives* < <http://womensenews.org/2013/12/syrian-women-in-jordan-face-economics-survival/> >

would marry her. They stayed married in Jordan for three months. Then he served her with a divorce notice because she was a night girl. Halaa explained how she started begging to earn money because she did not want to return to night-work. Halaa said her husband had given her a marriage of *Mutaa*, meaning for pleasure.⁴⁵ I discuss this matter later. Some men marry women temporarily for sexual pleasure. They officially marry these women to avoid any social scrutiny and to protect their social status. Sex outside marriage for both sexes is frowned upon in Middle Eastern conservative Arab cultures. However, those relationships affect the female's social status harshly. For these reasons, I included a critical analysis of the language and power relations involved, how the latter affects sex trafficked females' lives, and how these processes contribute to expanding the underground sex industry.

In the *Jordan Times*, an article reporting the results of the Jordan national consensus, which was conducted in November 2015,⁴⁶ revealed that there were 2.9 million non-Jordanian residents, of whom 1.265 million (46 percent) were Syrians.⁴⁷ This article also reported that, in 2015, 636,059 Egyptian immigrants and 634,182 Palestinians who did not have a Jordanian national ID.⁴⁸ Of the overall population in Jordan of 9.5 million, Syrians constituted 13 percent, whereas Egyptians were 6.68 percent.⁴⁹

⁴⁵ *Zawaj al Mutaa* is a term that means temporary marriages. Linguistically, it means the marriage of pleasure because it is intended only for sexual intercourse and intimacy.

⁴⁶ Ghazal, above n 21.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

Jordan has been a destination for immigrants and refugees seeking a better life since 1948.⁵⁰ In an article written in 2010, Jordan was named a ‘refugee haven’.⁵¹ The refugees come from the surrounding countries, mainly Palestine, Syria and Iraq. Various studies and reports have pointed to the effect of the Arab Spring on the region, including Jordan.⁵² The Jordanian foreign policies and its circumstances have made it unique, especially in that it did not follow its counterparts, including Egypt, Libya and Tunisia, in being the next predicted candidate for an Arab Spring, though it encountered street protests in the capital Amman in 2010.⁵³ The Arab Spring started from December 2010 stretching its effect to different discourses.⁵⁴ The word Arab Spring was not used anymore by 2015.⁵⁵ However, the Arab Spring influence nowadays extends in ‘twists and turns’.⁵⁶ In 2015, Alsoudi described the Jordanian use of ‘soft power’, which aided political stability and avoided a Jordanian Arab Spring, in response to the Muslim Brotherhood political movement.⁵⁷ However, Jordan’s profile as a good option for migration and a haven for Syrian refugees fleeing the war are intersecting circumstances, which have contributed to the layers of vulnerability for women fleeing the war.⁵⁸ The report of the Special Rapporteur on Trafficking in

⁵⁰ See Geraldine Chatelard, *Jordan: A Refugee Haven* (31 August 2010) Migration Policy Institute (MPI) <<http://www.migrationpolicy.org/article/jordan-refugee-haven>>.

⁵¹ Ibid; MPC team, *MPC – Migration Profile: Jordan – the Demographic-Economic Framework of Migration – the Legal Framework of Migration – the Socio-Political Framework of Migration* (June 2013) Migration Policy Centre <http://www.migrationpolicycentre.eu/docs/migration_profiles/Jordan.pdf>.

⁵² Lucas Winter, *Jordan and Saudi Arabia after the Arab Spring* (2013).

⁵³ Curtis R Ryan, ‘Jordanian Foreign Policy and the Arab Spring’ (2014) XXI(1) *Middle East Policy Council*.

⁵⁴ Danielle Meltz, *Civil Society in the Arab Spring: Tunisia, Egypt, and Libya* (Undergraduate Honors Theses, University of Colorado, Boulder, 2016).

⁵⁵ See Hafez Ghanem, *The Arab Spring Five Years Later: Towards Great Inclusiveness* (Bookings Institution Press, 2015) 7.

⁵⁶ Ibid 8; Dan Simpson, ‘The Fire Every Where: A Look at the Arab Spring Five Years Later’ *Pittsburgh Post Gazette* (24 July 2016).

⁵⁷ Abdelmahdi Alsoudi, *The Impact of the Arab Spring on the Political Future of the Muslim Brotherhood in the Middle East: Jordan as a Case Study*, Middle East Review of International Affairs (Rubin Center – Research in International Affairs, 2015).

⁵⁸ Nora Samoudi and Ann-Claire Larsen, ‘Exploring Feminist Concerns in a Cultural Context: The Voices of Service Providers for Sex Trafficked Females in Jordan’ (Paper presented at the 3rd KANITA Postgraduate International Conference on Gender Studies, Penang, Malaysia) 317. <http://eprints.usm.my/31323/1/Nora_Samoudi.pdf>.

Persons explains that for refugees from Syria, Iraq and Palestine, not all cases involving immigration, refugees or asylum-seeking led to trafficking.⁵⁹

The significance of this topic lies in the lack of research on sexual exploitation in Jordan. The Special Rapporteur on Trafficking in Persons in Jordan has expressed her concerns about confining the idea of trafficking in Jordan to ‘labour exploitation of non-Jordanians’ as this would result in disregard for forms of trafficking, including sexual exploitation.⁶⁰

The Jordanian government’s response to the problem of trafficking included legal reform, policing, protection schemes, and cooperation and collaboration with local and regional agencies and organisations interested in combating trafficking. These responses were discussed in the TIP annual reports and the UNCHR report of the Special Rapporteur on Trafficking in Jordan.⁶¹ The Counter Trafficking Unit (CTU) was established in 2013 by the ministries of labour and interior with the mission of prevention, investigation and prosecution of traffickers, identification and protection of victims.⁶² The Trafficking in Persons UN Special Rapporteur argues that government agencies lacked collaboration and cooperation in combating trafficking. Training conducted by experts for the prosecutors and police staff from the Jordanian government, in Amman, Jordan, was reported with a recommendation for the prosecutors and police to collaborate, as the trainers noticed a lack of collaboration between both parties.⁶³ The lack of collaboration between the police and prosecutors regarding trafficking crimes is a significant

⁵⁹ UNCHR, *Report of the Special Rapporteur Trafficking in Persons, Especially Women and Children, on Her Mission to Jordan*, 32nd sess, UN Doc A/HRC/32/41/Add.1 (8 June 2016), para 6.

⁶⁰ Ibid.

⁶¹ Ibid; US Department of State *Trafficking in Persons Report*, (U.S. Department of State Publication, 2016).

⁶² UNCHR, *Report of the Special Rapporteur Trafficking in Persons, Especially Women and Children, on Her Mission to Jordan*, 32nd sess, UN Doc A/HRC/32/41/Add.1 (8 June 2016), para 40, 43.

⁶³ Ibid para 42.

issue. I also seek to understand whether there is collaboration among government agencies in policing, preventing trafficking, prosecuting traffickers and protecting victims.

In September 2015, Jordan established a shelter for human trafficked victims.⁶⁴ According to the TIP report, the newly established human trafficking shelter had a three year budget of 750,000 Jordanian Dinars (JOD), which is estimated to be around 1,056,264 US dollars.⁶⁵ This shelter provided services for women, men and children. Before the establishment of the human trafficking shelter, sex trafficked victims were sheltered in a gender-based violence shelter belonging to the government.⁶⁶ Civil society organisations run private shelters; however, the Special Rapporteur explained that these civil society organisations lack the strength to contribute in-service provision for the victims.⁶⁷ I explore why there is a lack of capacity among these organisations to providing support and services for the victims of sex trafficking and exploited sex workers.

There are sheltering services options available for sex trafficked victims in the human trafficking shelter, a gender-based violence shelter and civil society organisations. However, there is a lack of information on the extent of sex trafficking in Jordan; and whether sex trafficked victims and sex workers do not wish to contact the police to seek justice. The UN Special Rapporteur criticised the government human trafficking shelter because it provides sheltering for two months only, with the possibility of renewal.⁶⁸

⁶⁴ US Department of State *Trafficking in Persons Report*, (U.S. Department of State Publication, 2016).

⁶⁵ Ibid 220.

⁶⁶ UNCHR, *Report of the Special Rapporteur Trafficking in Persons, Especially Women and Children, on Her Mission to Jordan*, 32nd sess, UN Doc A/HRC/32/41/Add.1 (8 June 2016), para 48.

⁶⁷ Ibid para 80.

⁶⁸ Ibid para 50.

The trafficking of the persons vulnerable to trafficking and the perpetrators intersect in dynamically complex ways. I observed a hospitality establishment where sexual exploitation and sex trafficking were potentially occurring. My observations corroborate the findings of this research and affirm the significance and importance of researching this matter. There is a lack of research in Jordan on sexual exploitation.

Introducing the research question, and the scope of research

B *Thesis question and the scope of research*

This research asks, ‘what is the appropriate treatment of sex trafficked victims and sex workers in Jordan?’ The answer lies in exploring the language, ideology, and power relations involved, all of which affects sex trafficked and sexually exploited victims, in the Jordanian cultural context. This exploratory research was done in 2015 and 2016. The issue of consensual sex work, in which women could express their freedom of practising sex work, is an issue that should be discussed with careful consideration. Nonetheless, the rights of sex workers and sex trafficked victims within an appropriate criminal justice, legal and social reform in Jordan is considered in this thesis.

I aim to understand Jordan’s current policy and protections provided to the sex trafficked victims. This case study explores the social processes in which sex trafficked and sexually exploited females were contextually constructed regarding their legal and social status.

In particular, my research aims to identify measures to improve the services offered to the sex trafficked victims and exploited sex workers. In the previous section, I have explained the cultural background I observed to link it to the discussion of the views of seven service providers and the stories they told.

The scope of my research is limited to cases of sex trafficking and exploitation of sex workers in Jordan that is a destination country for sexual exploitation for profit. The subjects of my research include under-aged and mature females, who were classified as victims of sex trafficking and were rescued, including the ones who were not identified by Jordan's criminal justice system as victims of sex trafficking. In other words, sex workers who might refuse to be identified as victims of sex trafficking, though they are enduring an exploitative sex work environment, are included in my discussion. The scope of my research also includes evidence of sex trafficked victims who were not rescued and sex workers who experience an exploitative work environment.

This thesis does not discuss child marriage *per se*; that is, whether or not it happens in Jordan. I focus only on cases of sexual exploitation of sex trafficked victims and sex workers who endure exploitative environments for the purpose of profit and gain. Included in such environments are 'temporary marriages' for gain or profit and some of these involve girl-children.

My research focuses on sex trafficked victims and sex workers: women who experience heterosexual violence. I admit that although there is a lack of information on whether there is an exploitative sex industry for male victims, the Special Rapporteur includes in her report cases of trafficking of women, girls and boys in the sex industry. The case of the exploited male sex worker remains vague. Therefore, I focus only on those who culturally identify as women and girls, as I will explore their gendered role, human rights and cultural influences on their decision making regarding leaving or staying in the sex industry. For instance, explored will be honour killing of females and the effects of a loss of honour on their agency necessitating that they stay in the industry.

I emphasise that this research explores the discourse, language and ideology on sex trafficked females and the sex workers in Jordan. I was unable to research sex trafficking crimes without referring to sex work.

I have chosen to include sex workers because it can be too complicated to decide whether the female has chosen as a free agent to perform sex work or not. Nonetheless, I call them exploited sex workers because they refused to contact the police as they were concerned about prosecution; and that the sex trafficking environment had increased their risk of exploitation. Although I do not support abolishing sex work, I became aware that sex work in Jordan involves criminal conduct, which might put sex workers at further risk and harm.

In the sex work debate in the literature, which will be elaborated in Chapter IV, I take a clear political stand. My position is not abolition or regulation of sex work as I see both positions as involving government interference that may stereotype or stigmatise the women who are practising sex work, regardless of their consent. I am pro-decriminalization of sex work, which slightly differs from regulation or legalisation of sex work. Decriminalisation is the repealing of any law that criminalises any party in the sex trade. I see decriminalisation as the most humane method for treating sex workers and sex trafficked victims. Decriminalisation harmonises with my argument for providing easy access to social justice, without the stigma of being stereotyped; that is, being classified as a victim in abolition regime or as a sex worker working in a non-licensed sex industry in a regulatory regime.

I consider female sex workers as humans who might be living in an exploitative environment, especially that they might be stigmatised and marginalised due to culturally constructed

stereotypes. I consider sex work and sex trafficking as two different terms that can easily be confused one with the other; therefore, both should be carefully discussed together in this thesis.

I have limited my concerns to specific forms of trafficking in Jordan as reports or formal material on sex trafficking in Jordan is scant. However, my data showed that the forms of trafficking were numerous and changing. This will be explained thoroughly in Chapter VI.

C *Introducing the Qualitative Methodology*

Before I introduce my research design, I define constructionism, according to Crotty:

The view that all knowledge, and therefore all meaningful reality as such, is contingent upon human practices, being constructed in and out of interaction between human beings and their world, and developed and transmitted within an essentially social context.⁶⁹

Meaning, language, gender roles and other manifestations and understandings in a certain social context are continually reconstructed. This is at the core of the epistemology driving this research. In the following, I introduce my theoretical framework and research methodology including the methods used in both gathering the data and analysing the findings.

I start with linking the main research question to the theoretical framework. I then describe the feminist, criminal justice and social justice approaches to sex trafficking, sex work and gender-based violence and explain how these approaches inform the theoretical framework of intersectionality.

Before mapping this research approach to the research methodology, I evaluate the research questions to link them to the designed research. I repeat the main questions: how do service

⁶⁹ Michael Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (Allen & Unwin, 1998) 42.

providers of sex trafficked and sexually exploited females view an appropriate criminal justice, legal and social reform response in Jordan? What is the appropriate treatment for sex trafficked victims and sex workers? These main thesis questions and the sub-questions guide my understanding and exploration of the issues.

It is necessary to identify appropriate data sources to assess whether it is better to legalise, decriminalise or abolish sex work. I decided to obtain my data via interviews with service providers who work with sex trafficked victims and in some cases with sex workers. These interviews would also provide me with an understanding of relevant aspects of Jordanian culture and the legal discourse on incrimination about sex trafficking, sex work and other incriminated sexual activities. The research methodology is therefore qualitative research with an exploratory purpose.

Flyvbjerg's book *Making Social Science Matter* influenced me to ask why I need to collect and use the views of the seven service providers to make this research context dependent and constructionist.⁷⁰ I found that the interviewees provide a complex and overlapping contextual significance requiring a theoretical framework that captures their intersecting circumstances. This research aims to explore and understand the context of the situation. In addition, it has the potential of informing policy for the Jordanian criminal justice and social systems. However, qualitative research does not have the potential to generalise, as the contexts of policy and practice are not stable and can change.⁷¹ Liamputtong asserted that qualitative research is preferable in cases of cross-cultural research⁷², in particular, because it allows the voices of

⁷⁰ Bent Flyvbjerg, *Making Social Science Matter: Why Social Inquiry Fails and How It Can Succeed Again* (Cambridge University Press, 2001).

⁷¹ See David S Byrne, *Applying Social Science: The Role of Social Research in Politics, Policy and Practice* (Policy Press, 2011), 187.

⁷² See Pranee Liamputtong, *Qualitative Research Methods* (Oxford University Press, 2013).

marginalised people to become public. My research is cross-cultural because the interviewees are Jordanian, the sex-workers are expatriates from Syria , and as the interviewer, I am of Israeli-Palestinian background. In addition, special care must be taken during the data collection phase of my research in protecting the interviewees who are vulnerable service providers. I will explain this point later in discussing how to do sensitive research, and why it was not possible to interview the sex workers themselves.

According to Crotty, a research process should answer four questions,⁷³

- What methods do we propose?
- What methodology governs our choice and use of methods?
- What theoretical perspective lies behinds the methodology in question?
- What epistemology informs this theoretical perspective?⁷⁴

I schematise the answers for Crotty's questions as follows. I employed an intersectionality framework as my method of investigation and analysis.⁷⁵ Within this framework, I have applied feminist (in terms of the contextual distinction of gender⁷⁶) and cultural perspectives as well as perspectives related to human rights, criminal justice and social justice. This framework provides context for understanding and contributing to knowledge.⁷⁷ I have also recognised the influence of ethnographic and constructionist paradigms in the analysis of my findings as I sought to

⁷³ Ibid 2.

⁷⁴ Ibid 2.

⁷⁵ See Leslie McCall, 'The Complexity of Intersectionality' (2005) 30(3) *Signs: Journal of Women in Culture and Society* 1771.

⁷⁶ See literature review chapters II, III and IV on human rights, contextual perspectives, criminal and social justice perspectives, and the contextual influences on the distinction between gender roles.

⁷⁷ See McCall, aobe n 75; see also Nollaig Frost and Frauke Elichaooff, 'Feminist Postmodernism, Poststructuralism, and Critical Theory' in Sharlene Nagi Hesse-Biber (eds) *Feminist Research Practice: A Primer* (Sage Publications, 2nd ed, 2014) 42, 43, 67.

explore the interactions of people in Jordan, and their ‘human behaviour’ with the world in context. Crotty’s quotation at the beginning of this chapter alludes to this.⁷⁸

Defining ‘culture’ is crucial before explaining the data collection and analysis methods employed in my study. In particular, understanding Arab and Jordanian cultures is relevant to the methods, mechanisms and techniques of data collection and choosing an appropriate analytical approach. According to Aneas and Sandin, there is no consensus in defining culture. However, regarding the cross-cultural and intercultural context, Aneas and Sandin referred to a definition of culture that several authors agreed with including Pedersen and Alder, who defined culture as ‘the universe of information that configures the patterns of life in any given society’.⁷⁹ In this respect, I explore the universe of information of everyday life within which elements of Jordan’s dynamic society interact and relate.

In conducting cross-cultural research, it is vital to demonstrate the basics that may affect the research process. These basics are the vital elements understood from within the local culture where the research is conducted. I had to explore and understand the culture in Jordan as the context for my case study. For instance, I drew on the service providers’ insights to explore how the Jordanian culture views women, sex trafficked victims, honour and other understandings and meanings constituted in the Jordanian context.

Liamputtong explained how the knowledge of social and cultural backgrounds of marginalised groups obtained by research is vital for ‘culturally competent social health care’.⁸⁰ I agree with

⁷⁸ Crotty, above n 69, 42.

⁷⁹ María Assumpta Aneas and María Paz Sandín, ‘Intercultural and Cross-Cultural Communication Research: Some Reflections About Culture and Qualitative Methods’ (2009) 10(1) *Forum: Qualitative Social Research* article. 51.

⁸⁰ Pranee Liamputtong, *Performing Qualitative Cross-Cultural Research* (Cambridge University Press, 2010).

Liamputtong and consider knowledge is vital, not only for ‘competent social health care’, but also for competent social and legal care for the victims of sex trafficking crimes.

According to Aneas and Sandin, the ‘construct’ of a culture is continuously ‘modified’ within the various disciplines in which the culture is ‘deployed’,⁸¹ particularly in the context of globalisation and diversity, both of which characterise contemporary societies.⁸² I agree with this explicit demonstration of culture’s construction as modern societies is influenced by continuous changes that include, in certain scenarios, the conflicts and refugee crises that may gradually change the structures of a society. According to my observations related in the introductory chapter, the rapid expansion of cultural diversity, which includes an influx of immigrants and refugees from different countries, has greatly influenced Jordan. An observer could find Asian labourers in the hospitality business or nannies working as domestic servants, who also accompany their host families to shopping centres. In addition, Egyptians are widely employed in the waitressing business. Other minority groups, including Iraqis, Syrians and other migrants, are also observed. Also, Jordanian citizens include native Jordanians who are Bedouins, urban people, Palestinian-Jordanians and Gypsies. In addition, tourists and foreigners who come for leisure and work purposes, make diversity a formula that plays a large part in defining the multifarious Jordanian community.

As my research has a feminist-cultural flavour, it focused on the meanings and roles allotted to women in Jordan, according to the responses of the service providers. Hence, I explore the interviewees’ perceptions of the societal roles of the sex trafficked female victims and the

⁸¹ Aneas and Sandín, above n 79, 51.

⁸² Ibid.

marginalised sex workers. I also consider the language, ideology and discourse of the Jordanian context when analysing the findings.

Table 1: Methods and Perspectives

Qualitative Methods	Perspectives		
	Feminist and Cultural	Social Justice	Human Rights and Criminal Justice
Data collection	In-depth interviews (stories of sex trafficked victims and exploited sex workers, told by service providers who contact victims).	In-depth interviews (opinions about the policies of protection and societal norms). Non-reactive observations (of the culture and nightclubbing activities).	Legal language (Jordanian Penal Code articles related to sexual crimes including articles on crimes against honour and crimes related to sex work management; and the Jordanian Human Trafficking Legislation).
Data analysis	Intersectionality analysis by deriving dominant themes and categories of analysis and critiquing the categories in the literature	Critical analysis of constructed societal norms and protection policies	Sexed body discourse analysis of the law as a powerful influence on the discourse of sex trafficking crimes and exploited sex workers

This table will be explained in more detail below.

In the following section, I introduce the triangular methods of data collection via in-depth interviews, non-reactive observations and samples of legal language. Following this, I explain

the management of entering the field and gathering of the data including the discussion of reflexivity, sampling, ethical issues and potential risk management. In the last section, I summarise the analytical styles within the intersectionality framework. Before I explain the methods of data collection, I include the above table to show the link between my data collection and analysis methods and the perspectives that inform my theoretical framework.

1 *Triangulated methods of data collection*

Triangulating the methods of data collection was essential for filling the gaps and reflecting on multiple realities. Critical analysis requires a comprehensive investigation of all aspects of the case study to inform knowledge about sex trafficking and sex work in Jordan. This starts with the interview and observation data complemented with other sources of data. In this section, I will explain each method I have used to capture multiple realities, in addition to explaining how I coded the information from the interviews and observations. Figure 1-2 summarises this process.

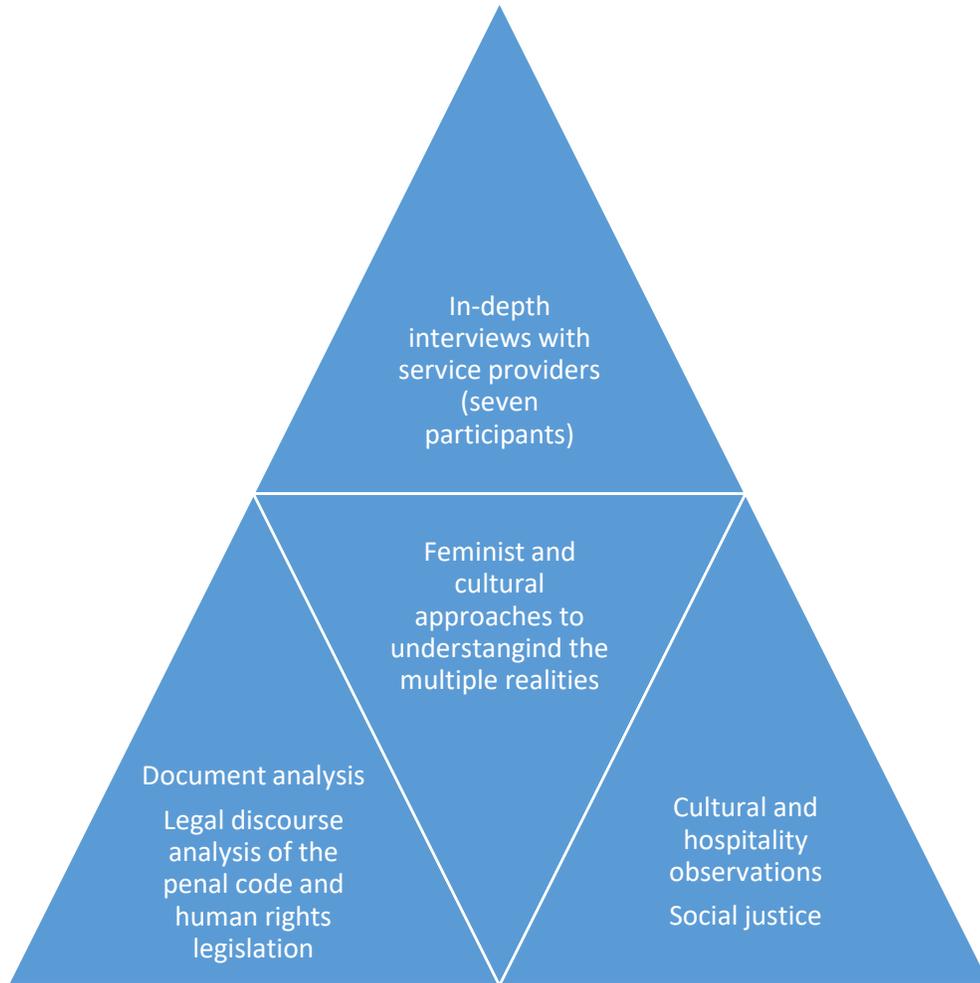


Figure 1-2 Triangulation of gathered data

Before summarising the three data collection methods, I discuss some broader issues of accessing qualitative and other data that are sensitive and difficult to obtain.

Entering the Field: Doing Sensitive Research

Before entering the field, it is crucial to acknowledge that the research I undertook is sensitive research. Lee, cited in Dickson-Swift et al, defined sensitive research as ‘research which potentially poses a substantial threat to those who are or have been involved in it’.⁸³ It covers the

⁸³ Virginia Dickson-Swift, Erica James and Pranee Liamputtong, ‘Doing Sensitive Research: What Challenges Do Qualitative Researchers Face?’ (2007) 7(3) *Qualitative Research* 327, 327; see Raymond M Lee, *Doing Research on Sensitive Topics* (Sage Publications, 1993).

research topic as well as the methodology and data collection. The people that were involved in it are myself, the interviewees, the victims of sex trafficking or sex workers mentioned in the stories, gatekeepers and any other third parties mentioned (directly or indirectly) by the interviewees.

This research is sensitive as it discusses sex, sexual freedoms and sex trafficking in a cultural context that considers certain sexual activities and discussion of them as taboo.⁸⁴ Consideration of the sensitivity of the research is taken in regard to the cultural and contextual circumstances to be researched.⁸⁵

Limoncelli suggested that data are lacking on trafficking, given the risks and threats in researching organised criminal groups and people who are marginalised and hidden.⁸⁶ Research on sex trafficking gender-based violence and sex work in Jordan is limited given the sensitivity of the issue and risks to the researcher and the researched. Even though I did not interview victims of sex-trafficking, there are still threats that affect me as a researcher and the interviewees or others involved. Lee Raymond suggested that sensitive research can attract a ‘political threat’, ‘intrinsic threat’ or ‘threat of sanction’.⁸⁷ An intrinsic threat, as Dickson-Swift et al explain, is the threat imposed when researching matters considered secret and private. A political threat is the threat that could occur when researching matters considered to be a controversial societal matter or a matter that interests those who are powerful in a society.⁸⁸ The

⁸⁴ See, eg, on research confirming the sensitivity of talking about sex in the Arab world Shereen El Feki, *Sex and the Citadel: Intimate Life in a Changing Arab World* (Vintage, 2014); Shereen El Feki, ‘Let’s Talk About Sex’ (2014) (470) *New Internationalist* 40.

⁸⁵ Heather McCosker, Alan Barnard and Rod Gerber, ‘Undertaking Sensitive Research: Issues and Strategies for Meeting the Safety Needs of All Participants’ (2001) 2(1) *Forum: Qualitative Social Research* 2.

⁸⁶ Stephanie A Limoncelli, ‘Human Trafficking: Globalization, Exploitation, and Transnational Sociology’ (2009) 3(1) *Sociology Compass* 72, 72.

⁸⁷ Lee, above n 83; Dickson-Swift, et al, above n 83.

⁸⁸ Dickson-Swift et al, above n 83.

threat of sanction is the threat of revealing data that might cause stigma or criminalisation of any party involved in the research.⁸⁹

As for doing cross-cultural research, I agree with adopting what Liamputtong referred to as a ‘healing methodology’ that shows respect of the prevalent culture.⁹⁰ First, the Jordanian culture, which is originally a Bedouin one, has a complex cultural structure. I have observed that the interviewees were tentative, even careful while speaking with me about the issues I raised. I must point to one of the interviewee’s frustration of Western countries’ interference in what happens in Jordan. If I was not careful with the language and framing of the interview questions, I could easily have been considered an intruder, attempting to shame the Jordanian culture.

Although I conducted the research in a respectful way, I also had to abide by ethical rules such as ensuring that the interviewees were willing to participate. Nonetheless, if any of the transcribed interviews contained data that were essential for the research, but at the same time posed a risk to the interviewee or any third party if exposed, I removed it from my notes.

Planning and snowballing

Planning the interviews was crucial to avoid problems in Jordan. I began by setting up a network of interviewees via a snowballing process before arriving in Jordan. I began this step via the telephone while at home in Palestine, Jordan’s neighbour. During the phone calls, I introduced the research topic, the aim of the research and the expected outcomes from the qualitative

⁸⁹ Ibid.

⁹⁰ Ibid.

interviews to be collected. I had a locked cabinet for storing materials in my home to protect the safety and confidentiality of the transcribed interviews.

I began by phoning local organisations experienced in receiving cases related to women's rights, human trafficking and sex trafficking, and family violence. I expected that, even if they did not provide services for sex trafficked victims, they would still have some ideas about who might be the right people to contact.

Rigour research: credibility, transferability, dependability and conformability

According to Carpenter and Suto, as cited in Liamputtong, the credibility of the research is built on the constructionist conceptualisation that 'there is no single reality but rather multiple realities that are constructed by people', and depend on where they are located.⁹¹ There is a requirement to present their experiences in an authentic manner.⁹² The credibility of my findings lies within the 'multiple realities' that the interviewees presented. I had service providers who produced varying opinions, given their various and multiple experiences in providing services to sex workers. The different experiences that each organisation had with both serviced and non-rescued sex trafficked victims uncovered multiple perspectives in the findings.

Transferability connotes the ability to generalise the findings or analysis of the research to other contexts, groups, individuals or settings.⁹³ However, qualitative research is questioned due to the

⁹¹ Liamputtong, above n 72; see Christine Carpenter and Melinda Suto, *Qualitative Research for Occupational and Physical Therapists: A Practical Guide* (Blackwell Publications, 2008).

⁹² Liamputtong, above n 72, 25; see also Carpenter and Suto, above n 91.

⁹³ Liamputtong, above n 72, 26; see Giampietro Gobo, 'Sampling, representativeness and Generalizability', in Clive Seale, Giampietro Gobo, Jaber F. Gubrium and David Silverman (eds), *Qualitative Research Practice* (Sage Publications, 2011) 405, 405–6; see Margarete Sandelowski, 'Using Qualitative Research' (2004) 14(10) *Qualitative Health Research* 1366.

belief that it cannot produce generalizable findings.⁹⁴ Gobo addressed reconciliation of some of qualitative researchers on the matter of generalisability in qualitative research.⁹⁵ The first is generalisation among the population, while the second stands for generalisation ‘about the nature of a process’.⁹⁶ In this research, I proceed with the latter approach which is also known as transferability or analytic generalisation.⁹⁷

The aim of my research is to understand and explore the way services for sex trafficked victims are conducted in Jordan; and the sources of oppression that consolidate, causing discrimination against the victims. The fact that I had seven interviewees limits the ability to generalise in the Jordanian context. However, the interviewees’ stories, opinions and other realities had similarities and common themes. This is not to say that I aim to generalise to other contexts (samples);⁹⁸ I aim only to explore the issue according to the interviewees’ views and stories of victims using analytical generalisation (also known as transferability).⁹⁹ The transferability of this research lies in my theoretical generalisability from the findings that I obtained from the field to the context being researched. This research generalises the use of the theoretical framework of intersectionality within the context of my case study. I later explain how I extracted themes of analysis (consolidated sources of oppression) that were influenced by anti-categorical intersectionality approach. The analysis themes arose out of this research. The findings enable me to reflect and suggest recommendations and contribute to knowledge on this topic.

⁹⁴ Giampietro Gobo, ‘Sampling, representativeness and Generalizability’, in Clive Seale, Giampietro Gobo, Jaber F. Gubrium and David Silverman (eds), *Qualitative Research Practice* (Sage Publications, 2011) 405.

⁹⁵ Ibid 405–6.

⁹⁶ Ibid 406.

⁹⁷ Ibid 405–6.

⁹⁸ See Deborah K Padgett, *Qualitative and Mixed Methods in Public Health* (Sage Publications, 2012) 205.

⁹⁹ See Gobo, above n 94, 406

Dependability means that the research ‘procedures are documented and traceable,’ and that the conclusions in the study are logical when put together.¹⁰⁰ The dependability of the research can be proven via introducing a triangulation of methods approach to the research.¹⁰¹ In this research, I use triangulated methods of interviewing participants, legal analysis of relevant legal documents and unobtrusive observations, the triangulated data make sense as the three sources are interlinked. It could be shown that the findings of the research are not from my imagination and are connected to the data.¹⁰² I have presented the findings in the appendices. For instance, I include the articles of the law that were taken from an online website in the appendices. I also present the stories from which I extracted the themes for analysis in the findings chapter.

While I was networking to obtain interviewees, I do not want to over-expose myself to staff who provide services for the female victims. If I was too exposed to the society of interviewees, their answers could be unintentionally or intentionally affected. I feared the interviewees would copy each other’s answers and avoid giving me their unique responses.

Sampling

Miles and Huberman explain how qualitative research usually focuses on *petite* samples, unlike quantitative sampling, which requires a large number of respondents.¹⁰³ At the start to data gathering, I aimed to do purposive sampling by approaching service providers working with the

¹⁰⁰ See Padgett, above n 98, 205.

¹⁰¹ See Ibid.

¹⁰² Ibid 205; Liamputtong, above n 72, 26–7.

¹⁰³ Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (Sage Publications, 1994).

UN Syrian refugees' relief agency. However, I had no access to potential interviewees for the study.¹⁰⁴ For this reason, I had to do convenience sampling.¹⁰⁵

I relied on snowballing to find interviewees. I started by contacting a civil society organisation employee and asking her whether any of her colleagues would be willing to participate. One of her colleagues linked me to potential interviewees, who referred me to different interviewees at other relevant organisations.

Snowballing and convenience sampling¹⁰⁶ permit the researcher to access potential interviewees who are reachable and agree to participate in the study.¹⁰⁷ I had several potential interviewees who though given approval from their offices to participate, decided not to participate. One of these potential interviewees, who was a shelter service provider, hung up the phone once she recognised my voice. This was interesting because her employer had approved my formal request to interview her. She was not the only person to express her willingness to participate then later withdrew consent. I assumed that my presence had become public knowledge and that conflicts of interest were behind the withdrawal of interest. After all, the research was sensitive.

However, my convenience sampling was successful in capturing the voices of service providers from different backgrounds, social classes and age groups. I interviewed two native Jordanian Bedouin and five with Palestinian/Jordanian origins. All interviewees held differing views in terms of their opinion about the present situation of women and the society they live in.

However, this is not to say that my sample is enough to claim generalisability. Gobo expressed

¹⁰⁴ Liamputtong, above n 72.

¹⁰⁵ See Ibid 15.

¹⁰⁶ Gobo, above n 94.

¹⁰⁷ Liamputtong, above n 72, 15.

concern about the fact that generalisability could be a ‘waste of time’ for qualitative researchers, especially if adopting non-probable sampling.¹⁰⁸ This was one of the limitations to my research, knowing that I could not interview a representative sample.¹⁰⁹

Ethical issues and limitations

Ethics is a main pillar in qualitative research of social sciences; therefore, it will be a main component in this feminist and human rights research.¹¹⁰ According to Edwards and Mauthner, ethics in social sciences connotes ‘moral deliberation, choice and accountability.’¹¹¹ The main principles of ethics, as mentioned by Guthrie, are ‘professional competence’, integrity, professional, scientific and social responsibility and ‘respecting people’s right diversity and dignity’.¹¹² This case study concerns vulnerable sex trafficked females, and as advocated by feminist writers, reasonable care was taken during fieldwork in Jordan.¹¹³ My social responsibility towards the people I focus on, and persons involved in this research, holds ethical dilemmas and could have a conflict of interest between the wider community of persons and me involved in this research.¹¹⁴

A main pillar for this research is to safeguard the people involved in this research. There are occasions where the findings were abridged to avoid disclosing information that could put persons involved in this research at risk. Persons involved include participants, observed persons in the public or even victims’ stories presented by interviewees and used in the analysis.

¹⁰⁸ See Gobo, above n 94, 405.

¹⁰⁹ See Ibid.

¹¹⁰ Rosalind Edwards and Melanie Mauthner, ‘Ethics and Feminist Research: Theory and Practice’, in Tina Miller, Maxine Birch, Melanie Mauthner & Julie Jessop (eds), *Ethics in Qualitative Research* (Sage Publications, 2014) 14.

¹¹¹ Ibid.

¹¹² Gerard Guthrie, ‘Basic Research Methods: An Entry to Social Science Research’ (Sage Publications, 2010) 16.

¹¹³ Edwards and Mauthner, above n 110, 20.

¹¹⁴ See Guthrie, above n 112.

I have studied the Australian National Statements on Ethical Conduct in Human Research,¹¹⁵ and undertaken a literature review on researching vulnerable groups, to explore guidelines and rules on how to avoid ethical conflicts and minimise risks.¹¹⁶

As researching vulnerable groups is challenging, given ethical reasons and hardships in getting approvals from different entities and consent from participants, I considered alternatives to collecting the data about sex trafficked victims and sex workers. I applied for and received approval from Edith Cowan University Human Research Ethics Committee (HREC) to interview service providers who provide amenities to sex trafficked victims in Jordan. Later, I will explain the set of rules for the approved project in [Appendices A and B](#).

In Jordan, it is difficult to interview female sex trafficked victims who also are victims of social stigma or the threat of incrimination. They were unlikely to disclose their experiences to a researcher about issues that may risk their lives from familial honour killing or threats from perpetrators to re-traffic them, or directly cause potential psychological harm associated with telling their stories. Consequently, I was at a distance from the female victims who were the focus of this study. My focus, instead, was on criminal justice issues in Jordan.

According to Edwards and Mauthner, a researcher should not ‘accept contractual conditions’ that might cause harm to participants; the researcher should protect the participants and keep private information confidential.¹¹⁷ This is important for my research, knowing that the Jordanian Ministry of Economic and Social Development is awaiting a copy of the final thesis. For

¹¹⁵ Australian Government, National Statement on Ethical Conduct in Human Research (2007). <http://www.nhmrc.gov.au/_files_nhmrc/publications/attachments/e72.pdf>.

¹¹⁶ See e.g. Edwards and Mauthner, above n 110, 14.

¹¹⁷ Ibid.

instance, if they require me to do further studies and develop the findings, I must not accept any 'contractual conditions' which might disclose the confidentiality of the findings related to these interviewees or any other third party.¹¹⁸

To reduce the potential occurrence of risk or harm during the fieldwork and after finishing the research, I followed several strategies that are explained below.

If the research was not carried out in a responsible and ethical manner, the persons involved would be adversely affected. In this research, persons who may endure potential risks or harm are (1) the researcher, (2) the interviewees, (3) persons referred to in the transcripts and stories and (4) any person who was observed in public. In the following, I will discuss each of those four categories. Moreover, I will explain the risks and harm that might affect the parties involved. I explain how I avoided the potential risk for persons in each of the categories.

I noted a lack of research on feminism in Jordan. I explained to the interviewees how I do not intend to write a magazine article or propaganda piece, in case they were concerned. People tend to become defensive when those topics are discussed, especially in the media. I had to be explicit about my academic purposes. I also explained to the interviewees how their thoughts are valuable and essential for possibly influencing future policy.

Regarding the potential harm that could have occurred during my fieldwork, I was conscious of issues regarding privacy, confidentiality and anonymity. Anonymity is defined by Miles et al as a 'lack of identifiers, information that would indicate which individuals or organizations provided

¹¹⁸ See Ibid.

which data'.¹¹⁹ I coded and categorised the transcriptions to avoid identifying the interviewees or their organisations. I used fictitious names for the transcribed interviews saved in a password-encrypted drive.

Any name, place name or information about sex trafficked victims that could identify them or any other third parties was deleted from the transcriptions and replaced with fictitious information.

My observations at the hospitality establishment where the nightclubs were situated may be classified as sensitive. Therefore, I do not mention any information that would identify the establishment. Ethically, I was unable to observe what happens inside the nightclub. Because of the risks involved, I only observed activities in the lobby, which is a public place. I observed events in public places where I did not need to seek permission to be.

A study that I cited in the literature review chapter on Arab feminism that was done in Jordan by the ILO, reported an interview with a nightclub owner who said that there are about forty nightclubs in Amman, the capital of Jordan. If I did go into the nightclub, I would be causing harm to myself or any other party. Therefore, I sat in the lobby of the hospitality establishment and had coffee every night with my husband. I did not intend to observe events in the lobby before I started collecting data. However, these events occurred in front of me and were very much related to the research. I did not write them down when I was in Amman, but did so when I returned to Palestine. I started thinking whether I should report it to my supervisor. I did. Then later, I realised that I could use it for my findings.

¹¹⁹ Matthew B Miles, A Michael Huberman and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook* (Sage Publications, 3rd ed, 2014).

To reduce any potential harm to anyone, I do not describe the hospitality establishment. In addition, I do not specify whether the nightclub is inside the hospitality establishment or an independent entity or business. The hospitality establishments in Amman will be introduced in the findings Chapters VI and VII.

To reduce any risks to myself, I had to make sure I stayed in Palestine most of the time, travelling to Jordan once I had contacted a ‘gatekeeper’ and arranged a meeting. I wanted to make sure I do not become known among the service providers’ community. Nonetheless, my husband accompanied me during my trips to Jordan and whenever I went to an office, a shelter or an agency. Each time I went to Jordan, I have stayed for 4-6 days only.

The researcher must understand the local cultural traditions. The Jordanian culture is conservative and religious. I remember walking down the streets in the city centre of Amman during ‘Ramadan’ in June 2015. The weather was hot and most people were fasting. I rarely saw anybody eat or drink in public before sundown (Maghreb), which confirmed that this is a conservative culture, similar to the one I am used to in Palestine. Not everyone was fasting, but I concluded that ethically binding rules governed the Jordanian culture on how people must behave in public places. People prefer not to eat in public to respect those who are fasting.

I was careful about how I introduced and presented myself. First, I was wearing a headscarf during my several stays in Jordan, so that whenever I introduced my topic, I would feel comfortable in explaining sex work and sex trafficking to the service provider gatekeepers and interviewees. Wearing a veil meant that I implicitly respected the culture and the Islam religion. It would signal that I am a conservative person who is not here to accuse any group of anything.

This point does not necessarily mean that women who do not wear hijab are outsiders. Three out of the six female interviewees were not wearing a headscarf (hijab).

In Arab Middle Eastern countries, including Palestine and Jordan as a minimum, wearing a hijab represents a soft and passive way of resisting patriarchy. In my opinion, women who do not wear a veil are seen as a person who tends to rebel and ignore religious and traditional values that are structured within patriarchal rules. Not wearing a hijab while being in Jordan, could signal to persons I contact in the field that I resist and ignore cultural values. In this scenario, I could be judged as an outsider wanting to criticize cultural values and possibly seek resistance against patriarchal values. By avoiding being stereotyped, I maximised the possibility of getting the trust of persons that I networked with during the fieldwork.

Service providers do not readily trust a researcher. Therefore, I had to introduce myself as an Arab academic with interrelated familial relations. I introduced the city I came from, which was Jerusalem. I had to refer to Palestinian universities where I used to work so that I become an open-book to them. They could relate to me via their friends, family or work connections in Palestine. Suad Joseph described how when she went to Lebanon to study Arab families and gender roles, she introduced herself to one of the locals in a village, where her ancestors came from.¹²⁰ This helped her in gaining the trust of a local who knew her family very well. He then assisted her in networking for interviewees.

¹²⁰ Suad Joseph, 'Gender and the Family in the Arab World' in Suha Sabbagh (ed), *Arab Women: Between Defiance and Restraint* (Olive Branch Press, 1996) 194.

Anthropologists are seen as intruders to primitive or non-Western cultures; the locals consider ethnography as offensive.¹²¹ By wearing a veil myself, I implied that I do not hold any ideas about emancipating women in Jordan. I am a neutral person trying to understand and explore a particular situation. However, I secured fewer interviews than I expected.

Subjectivity and reflexivity: an insider-outsider approach

Feminist research advocates the researcher's reflexivity.¹²² Moreover, it is crucial to refer to Dickson-Swift et al's point about the traits of the methodologies of feminist research, which acknowledge its subjectivity.¹²³ Feminist research calls for not separating the subject from the object (researcher from interviewees), by including the voice of the researcher as much as the voice of the interviewees.¹²⁴ This is not to claim that I over-intervened as a researcher. On the contrary, I believe that the interviewees' views provide rich information so I needed to provide the space to hear their thoughts. However, I do reflect subjectively on this research.

Two dichotomies have contributed to the data collection. I approached the fieldwork while interviewing and observing from insider-outsider and emic-etic perspectives. The emic and etic dichotomy was first presented by Pike in 1954.¹²⁵ According to Pike, in the etic perspective of the analyst, data are obtainable in the early analysis phase, prior to data gathering from the context.¹²⁶ The emic perspective is obtainable from the related context that is to be studied.¹²⁷ It

¹²¹ see Ronald Cohen, 'Human Rights and Cultural Relativism: The Need for a New Approach' (1989) 91(4) *American Anthropologist* 1014.

¹²² Sharlene Nagy Hesse-Biber and Deborah Piatelli, 'The Synergistic Practice of Theory and Method' in Sharlene Nagy Hesse-Biber (eds), *Handbook of Feminist Research: Theory and Praxis* (Sage Publications, 2nd ed, 2012) 176, 177.

¹²³ Dickson-Swift et al, above n 83, 5.

¹²⁴ Nagy Hesse-Biber and Piatelli, above n 122, 177.

¹²⁵ Kenneth Pike, *Language in Relation to a Unified Theory of the Structure of Human Behavior* (The Hague Mouton, 1967).

¹²⁶ Ibid.

¹²⁷ Ibid.

allows the researcher to understand the ‘language and culture that is structured’ in a given context.¹²⁸ In a nutshell, Pike explains that the emic perspective would influence the researcher by describing the structural functioning of the studied context; whereas the etic perspective would allow the researcher to describe the elements once they are found in the studied context.¹²⁹

Bergman and Lindgren employed what they call the integrated perspective, in which they depend on both emic and etic perspectives, in data gathering in their research.¹³⁰ They explain how the emic approach is the participant perspective, while the etic approach is the researcher’s perspective. The researcher emically approaches the potential interviewees via their previous experience when communicating with the interviewees. On the other hand, the researcher would use his or her etic perspective when they communicated the results of their research.¹³¹

According to Hammersely, as cited by Bergman and Lindgren, a researcher needs to balance the perspective of the interviewee and develop ‘an analytical understanding’ of the studied context.¹³²

As I am an Arab woman who understands the Middle Eastern culture and its conservatism, I look at the data through an insider’s lens. I have a deep understanding of the emic perspective of the interviewees. My identity, understanding honour and shame in the Middle Eastern context, enables me to reflect on the research. In addition, I know how to behave with and interpret the language of the interviewees. I could get close to what they mean, but kept enough distance to

¹²⁸ Ibid 39-40.

¹²⁹ Ibid 39.

¹³⁰ Asa Bergman and Monica Lindgren, ‘Navigating between an emic and an etic approach in ethnographic research. Crucial aspects and strategies when communicating critical results to participants’ (2017) *Ethnography and Education*; Routledge, art 65.

¹³¹ Ibid.

¹³² Ibid; see Martyn Hammersley, ‘Ethnography: Problems and Prospects’ (2006) (1) 1 *Ethnography and Education* 3, 4.

ensure research rigour. What contributed to my becoming more critical is being an outsider, as I am not from Jordan, and the last time I visited Jordan was in 2001 before the start of this study. Nonetheless, my access to literature on feminist research, sexual exploitation and criminal justice enabled me to be more critical of the data.

I now refer specifically to the three main data collection methods – interviews, observations and legal documents.

(a) *In-depth interviews*

The interviewees are service providers who worked at shelters, clinics or health centres. The service providers offer services and amenities to the victims of human trafficking and sex trafficking or provide services for the sex workers who refuse to exit sex work. Six of the seven interviewees were female.

In this research, I conducted semi-structured in-depth interviews. According to Hesse-Biber, semi-structured interviews required a list of questions for the interviewer; however, he or she is open to ask questions during the interview, and the order of the questions is not a concern.¹³³

Interviewing helps in not only answering the research questions, but also in allowing the interviewees to provide information that the researcher did not expect or experience.¹³⁴ Also, it allows the interviewees to control the interview; thus, allowing them to provide the language and the meanings in the discourse on sex trafficking and sex work.

¹³³ Sharlene Hesse-Biber, 'Feminist Approaches to In-Depth Interviewing' in Sharlene Nagi Hesse-Biber (eds) *Feminist Research Practice: A Primer* (Sage Publications, 2nd ed, 2014) 182, 186-187.

¹³⁴ Liamputtong, above n 72, 51.

I must note that at times, I could not ask specific questions, fearing that they would cause discomfort. In those cases, the interviewees preferred to answer all of the questions, written in the information letter, firstly; then, they allowed me to ask any further questions I had in mind. I have asked questions that would aid in answering the research questions according to my evaluation of the interviewees' knowledge and experience that he or she explained in the interview.

As Liamputtong reported from other research, the language used in the interview and the expressions employed for the interviewing process are crucial in obtaining precise data.¹³⁵ Briggs confirmed the importance of accumulating information of what techniques are essential to understanding the society or the context in regards to their communicative or interactional norms.¹³⁶ Nonetheless, Briggs explains that the researcher must understand that certain types of questions could be deemed inappropriate for the interviewees.¹³⁷ In this regard, I was careful in choosing suitable terms for the language used in the interview. However, this can be challenging when considering the sensitivity of the topic of my research. Questioning the existence of sex work in Jordan is sensitive. At the same time, the questioning should use specific words to obtain accurate and truthful information. I was aware that I needed to use the term 'sex work' in my questions to elicit a narrow answer from the participant; however, I assumed the term 'sex work' may cause discomfort for the participants. I used this term carefully during the interviews.

The location of the interview is vital, Liamputtong asserted.¹³⁸ Though some interviewees tend to prefer their homes as a place to be interviewed, since they would feel more comfortable, many

¹³⁵ Ibid 56.

¹³⁶ Charles L Briggs, *Learning How to Ask: A Sociolinguistic Appraisal of the Role of the Interview in Social Science Research* (Cambridge University Press, New York, 1986) 94.

¹³⁷ Ibid 95.

¹³⁸ Ibid 64.

interviewees prefer to be interviewed elsewhere for privacy reasons.¹³⁹ Given the potential ethical dilemmas, and prerequisites related to confidentiality, the interviewees in Jordan preferred to be interviewed in their offices, where they usually provide services for the victims of human trafficking and sex trafficking. However, I offered to interview the interviewees wherever they felt most comfortable.

The interviews were recorded. It would have been hard to pay attention to details if I have not recorded the interview, since I would need to write notes and not be able to maintain the eye contact during the interview. The recordings also enabled me to benefit from the specific language used by each interviewee.

Regarding the interview conducted with the only male interviewee, I note here that as the male belonged to the conservative Muslim culture in Jordan, I interviewed him differently to avoid creating an uncomfortable atmosphere.¹⁴⁰ I describe this relationship between female researcher and a male participant who belongs to a Middle Eastern conservative society to be one of ‘fellowship’. During our meeting, we chatted about different matters related to policy and the law, academic research, and the Jordanian and Palestinian cultures. To avoid any discomfort for the male participant, my husband accompanied me for the interview in a private office. In a qualitative interview conducted by Abu-Rabia-Queder where she interviewed fathers of girls who drop out of school in the Negev Bedouin society, the author pointed out that she always had a companion during the interviews with the father.¹⁴¹ However, I was always careful, given ethical challenges, since I should ensure the interview was confidential. I implicitly understood

¹³⁹ Ibid 64.

¹⁴⁰ See healing methodology in Pranee Liamputtong, ‘Cross-Cultural Research and Qualitative Inquiry’ (2010) 1(1) *Turkish Online Journal of Qualitative Inquiry* 16–29.

¹⁴¹ Sarab Abu-Rabia-Queder, ‘Between Tradition and Modernization: Understanding the Problem of Female Bedouin Dropouts’ (2006) 27(1) *British Journal of Sociology of Education* 3.

that the male participant would prefer my husband stay inside the office during the interview, as he would be more comfortable talking about the subject matter at hand. In this interview, I used the perspective of an insider who understood how to manage the interview with a conservative person.

Nonetheless, sexuality is not a topic often discussed between opposite sexes in Arab societies. Thus, the male participant did not mention explicit stories of sexual violence or sexual intercourse as a form of sex trade or sexual exploitation.

I choose open questions that allow the participant to choose what he or she wanted to describe and talk about. As suggested by Liamputtong, open questions are recommended as they allow the participant to tell their side of the story. I started my questioning with two questions: ‘Can you tell me about yourself and your role in this office?’ and ‘Why did you choose to perform this job?’ These two questions allowed the service provider participants to speak about themselves; and whether they wanted to introduce themselves from a professional standpoint or a personal perspective. This allowed me to understand them better, which helped in avoiding any discomfort. My semi-structured questions, included in [Appendix A](#), did not directly contribute to the main thesis question or to the themes being analysed. This was because the interviewees did not always have a ready answer to the structured questions. A semi-structured interview allowed me to come up with questions relevant to the discussion, and to contribute to exploring the issue according to the varying experiences of each interviewee.

Consequently, that semi-structured interview contributed to allowing the interviewees’ different voices. In Appendix D, I included an abridged description of each interviewee and how they contributed to the research. I relied heavily on the opinions of the service providers, while considering their position and role in providing services. The stories of the victims of the service providers were taken into consideration in answering the main thesis question that is explained earlier in this chapter.

I interviewed the participants I was introduced to by the ‘gatekeepers’. I did not interview anyone before gaining permission from their organisation. Also, I did not interview the service

provider until I made sure that they genuinely wanted to be interviewed. The potential interviewees could have been forced by the ‘gatekeeper’ or their office to be interviewed. I made it clear to all service providers introduced to me that they did not have to participate in the interview even if their organisation had approved such an interview; I also explained that if I discovered that they were forced to be interviewed, I would not use the data from their interviews in the thesis.

In the information letter, I explained the aim of the research.¹⁴² I also clarified that the research is mainly about sex trafficking. This was explained before the interview, as some workers may not have wanted to participate in a topic that is controversial and sensitive. Some of the invited employees subsequently refused to participate.

In the consent form, I informed interviewees of their right to refuse being interviewed, ‘their right to withdraw at any stage’.¹⁴³ The consent form included all of the questions listed in [Appendix A](#); it also explicitly informed the participant not to mention any identifying information. This was one of the conditions upon the acceptance of this research project by the HREC. However, I explained to them that I would delete any identifying information if they unintentionally disclosed any such information. I provided them with a copy of the consent form and gave them a chance to read it carefully. I then read the consent form to them with a clear voice. In the consent form, I made it clear that the interview was recorded and that they had the right to hear the recorded interview if they wanted. I signed the consent form with each interviewee and gave them a consent form for their records.

¹⁴² Guthrie, above n 112, 17.

¹⁴³ Idid, 17.

According to Aneas and Sandin, ‘language and mental maps are cultural elements, with which the researcher operates in the analysis and the construction of the results’.¹⁴⁴ It was an advantage for me to speak the Arabic language and to use certain terms to refer to categories. Translating and transcribing the interviews proved challenging, especially as I did not want certain words and sentences to lose their valuable meanings; words that can only be analysed efficiently if those meanings were preserved correctly in English. This is why I wrote translating and transcribing instead of transcribing then translating. I immediately translated each sentence and wrote it as part of the transcript of each interview; then, I read it aloud while listening to it in the Arabic audio. An example from my research, to show how this can help preserve meanings correctly, is the term ‘*bint*’. ‘*Bint*’ means girl (*banat* referred to girls), which was frequently used when referring to victims of violence, regardless of their age. This fact is clarified in the findings chapter in reference to the service provider’s use of the term *banat* when referring to sex trafficked victims. I called on my cultural background to understand the language used by the participants. Not only does the word ‘*bint*’ refer to underage girls, but it also refers to women of all ages who have not lost their virginity.

Abu-Rabia-Queder explores the problem of language in her research on Bedouin girls dropping out of schools in the Negev region, following the modernisation plan set up by Israel.¹⁴⁵ Abu-Rabia-Queder conducted interviews with families and girls in Arabic, and the findings of the transcribed interviews were codified in her article in English. Some of the opinions of the participants in her article that were translated into English had lost a minimal degree of meaning following their literal translation. When translating the interviews to English, one cannot avoid

¹⁴⁴ Aneas and Sandín, above n 79.

¹⁴⁵ See Abu-Rabia-Queder, above n 141, 3.

losing some meaning in the text. However, the phrases and sentences that partially lost their exact meaning did not affect the discussion and analysis of Abu-Rabia-Queder's research. However, my research required me to transcribe the Arabic version in English, while paying attention to cultural expressions that may be analysed more efficiently if kept in Arabic. This was due to my adoption of an analysis that is influenced by discourse analysis.

As I kept Arabic expressions in the English transcription, this would logically mean that I have to transcribe the interviews. I encourage researchers who are conducting cultural or cross-cultural research, which employs in-depth interviews with participants who speak a foreign language, to translate and transcribe the data themselves, if the researcher understands their language. Translating and transcribing the interviews at the same time is a complex and time-consuming mission.¹⁴⁶ However, it allows the researcher to conduct preliminary analyses while transcribing.

Seidman recommended transcribing the whole interview, knowing that at the transcribing phase it would be too early to pre-select what to analyse.¹⁴⁷ I transcribed the seven interviews. After completing the transcriptions, I read them repeatedly and highlighted the interesting parts from the transcribed interviews. Later, I created shared and connected themes from the seven transcribed interviews. Creating interconnected themes from across the transcriptions assisted me in performing preliminary analysis and interpretation prior to choosing my analysis methods.

¹⁴⁶ Irving Seidman, *Interviewing as a Qualitative Research: A Guide for Researchers in Education and Social Science* (Teachers College, Columbia University, 3rd ed, 2006) 116.

¹⁴⁷ *Ibid* 115.

Interviewing enabled me to amass information only through the consciousness of both the researcher and the participants via their interactions.¹⁴⁸ Lee explains how nonreactive (unobtrusive) measures allow the surge of information of which the researcher is not aware.¹⁴⁹ In the following, I explain the unobtrusive observations used as a method to collect data on the Jordanian culture.

(b) *Unobtrusive observations*

Lee defined inobtrusive measures as data gathered ‘by means that do not involve direct elicitation of information from research subjects.’¹⁵⁰ Unobtrusive methods in qualitative research, known as non-participant observations, are ‘non-reactive research methods’.¹⁵¹ Webb et al explain how having more than one method could approximate data to avoid the weaknesses of adopting an individual method.¹⁵² As pointed out by Kellehear, the researcher collects the raw material from a society without the need to disrupt the participants or the objects that are investigated.¹⁵³ During my research experience, I observed spheres without disrupting the surroundings. For instance, I saw and heard activities in the hospitality establishment where I was staying during the fieldwork. The observations, which related to nightclubbing activities, suggested an exploitative environment for female nightclub workers. The observations made in the hospitality establishment were not anticipated. The opportunity came by chance while I was sitting at night in the lobby with my husband. The observed activities were incidents that were

¹⁴⁸ Raymond M Lee, *Unobtrusive Methods in Social Research* (Open University Press, Philadelphia; Buckingham, 2000) 1.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid 1.

¹⁵¹ Eugene J Webb et al, *Unobtrusive Measures: Nonreactive Research in the Social Sciences* (Rand McNally & Company, Chicago, 1966); see Liamputtong, above n 72.

¹⁵² Webb et al, above n 151, 1-2.

¹⁵³ Allan Kellehear, *The unobtrusive Researcher: A Guide to Methods* (Allen & Unwin, 1993); see Liamputtong, above n 72, 99.

frequently occurring in the same establishment every time I went back to Jordan. The frequency of the activities made them a focal point that falls within the Jordanian society in the capital Amman, and relevant to my research. Therefore, I decided to write down everything I saw and heard.

Unobtrusive observation is essential for my research because it helped me in gathering material without offending people. Visiting Jordan during data collection formed spontaneous findings for my thesis. In Bernard's clarification of unobtrusive methods, he suggested that all methods of data collection invested to study human behaviour without letting the researched know that their activities are being studied should be included.¹⁵⁴

Liamputtong pointed to Bernard's consideration of disguised and manipulative observation as a form of an obtrusive method; however, Bernard pointed out that these considerations might hold ethical dilemmas.¹⁵⁵ This point will need further investigation as I made unobtrusive observations for this research while staying at the hotel in Jordan. This research, as explained before, triangulated three methods of data collection.

With the service provider participants, I intervened in their domain and interrupted their work for approximately 60 minute for the interviews, following meetings held to facilitate the interviews. In contrast, the unobtrusive observations I made in the hospitality establishment did not interfere with the social interactions happening every night in the lobby. The observation reports complemented responses from the service provider participants.

¹⁵⁴ Russell H Bernard, *Research Methods in Anthropology* (Rowman & Littlefield Publications Group, 5th ed, 2011) 306.

¹⁵⁵ Ibid; see also Liamputtong, above n 72.

As Liamputtong wrote, ‘even when people tell you what they believe or do in the interview situation, do they tell you the truth? They may not do so because of some personal, social, cultural, or political situation.’¹⁵⁶ Earlier in 1966, Webb et al reported the weaknesses of adopting a singular interview method.¹⁵⁷ This is not to underestimate the importance of interviewing the service providers. The service provider participants, who provide services for sex trafficked victims, might not exactly tell the truth for political reasons or given the sensitivity of sex work and sex trafficking, especially if the service providers work at governmental shelters. However, unobtrusive observations of the nightclub near the lobby gave a living background to the stories of the service provider participants, in addition to filling in gaps from the unanswered questions during the interviews.

It may be asked: what influence would the technique of investigating the ‘material culture’ have on the research and is it important for this research?¹⁵⁸ My answer would reflect Liamputtong’s emphasis on how it can give an insight into the cultural ideology in the relevant fieldwork.¹⁵⁹ Studying the material culture and the surrounding of the nightlife in a conservative Middle Eastern culture would give the reader who knows little about Jordan’s culture, background to the data collected in the interviews. It will make the fieldwork experience a living one with a complementary triangulation of data collection methods.

Watching people’s interactions can be done in both public spheres and private ones.¹⁶⁰ Regarding public spheres, Bernard gave examples of nonreactive observations that could be conducted in malls, shopping centres and bars with his argument that this is not unethical due to its location in

¹⁵⁶ Liamputtong, above n 72 100.

¹⁵⁷ Webb et al, above n 151, 1-2.

¹⁵⁸ Liamputtong, above n 72, 102–103.

¹⁵⁹ Ibid 102.

¹⁶⁰ Ibid.

a public sphere.¹⁶¹ In private settings, permission is required before conducting the observation.¹⁶² I observed conduct in the lobby of the hospitality establishment, a public place where guests sit. However, entering the nightclub could have had ethical implications. The nightclub's owners might not grant permission. Given the ethical and sensitivity considerations, I did not enter the nightclub.

Observing clothing, on the other hand, was essential for my study. Liamputtong reported Palca's argument that clothes can have a tangible meaning, reflecting the place and occasion in which they are worn.¹⁶³ The people I observed in the hospitality establishment lobby at night wore different kinds of clothing with relevance to what they do and where they came from. As I am Middle Eastern, I could tell how certain dress codes meant something to Arab ethnicity (Jordanian or not), whereas other dress codes could tell me whether a person worked in the nightclub, or at the reception desk. I can tell if a woman's dress was acceptable or not, according to the constructed conservative dress-code in Jordan. For example, I have described how women working in the nightclub are dressed in inappropriate clothing for public places.

The observations of the hospitality establishment reflected the changing cultural and social situation in Jordan.

Introducing the Observations

The last time I had visited Jordan before starting my fieldwork was in 2001. I went to Jordan to visit relatives who live in Amman, Alzarqa and Irbid. Going back to Amman in 2015/16 to collect data about sexual exploitation was a very different experience. I first noticed many

¹⁶¹ Bernard, above n 154, 352.

¹⁶² Liamputtong, above n 72.

¹⁶³ Ibid 107.

changes in Jordan, especially those affecting the social, cultural and economic situation. This research does not analyse the reasons why these changes happened. However, observing the culture has provided an understanding of the social and economic situation that intersects with the problem of sex trafficking in Jordan.

From my emic perspective, writing about the cultural and social observations was influenced by my background as a Middle Eastern Arab woman. I am not Jordanian, but I share a similar cultural background. I am aware of common familial and patriarchal structures. Therefore, I understand the situation of females who experience Middle Eastern social and cultural traditions and their survival needs. Nonetheless, I had previous perceptions as to what Jordan would be like from my previous visit to Jordan in 2001.

One of the interviewees, Dalal, a Jordanian, said that people are not poor anymore and that aspects of the culture have changed. She considered that the familial patriarchal structure was no longer capable of protecting females from becoming victims of sex crimes. Her opinion convinced me to include a discussion of the social and cultural dimension, given how much Amman has changed.

While I was interviewing the interviewees in the city of Amman, I observed public spheres in the metropolitan city of Amman and other neighbourhoods where I travelled. I have also observed newly established neighbourhoods. Also, I observed a neighbourhood that was remote from the city of Amman; though it was part of the metropolitan area of the capital of Amman. Located in this neighbourhood was a very well-known shelter for women and girls needing services to protect them from family violence. I went to this neighbourhood in March 2016 to interview one service provider participant.

In those public spheres, I observed different cultural manifestations that included hospitality establishments, taxis, a famous mosque in the city centre, old shops, cars, shops, shopping centres and the urban design of the visited neighbourhoods. Also, I observed the behaviour of the people while I was in those public spheres. All I observed indicated the social, economic and cultural changes in Amman and in Jordan in general.

The city of Amman has changed regarding urban design, the shops, the market, the buildings, even the cars and the streets have changed. In addition to this, people's behaviour seems different from what I expected. Their lifestyle and interests seem to have changed. Prices of food, clothes and other products have changed. Jordan has modernised.

The beginning of snowballing

In February 2015, I went to Jordan for my first field trip. After contacting a person who worked at a civil society institute, I got their permission to interview service providers from their institution. When I asked her about a time to meet one of the interviewees, she told me that once I get to Jordan, I must call her to arrange a meeting at the centre. It was the right time to go for my first field trip. I booked a stay for three nights at a hospitality establishment and travelled to Jordan on Monday in February 2015.

On Monday afternoon, I crossed the borders of Alenby with my husband. Our first stop was the city of Shouneh, which is mainly populated by native Jordanians. Once we passed Alenby, the taxi drivers competed with each other, offering us a private ride to Amman. In that public taxi area, a police officer monitors the taxis lined up to make sure that passengers were satisfied and not deceived about prices. We eventually took a public taxi. Then we were driven to our

hospitality establishment. We arrived during daylight. Female and male receptionists welcomed us and took our bags to our room in the upper levels.

When I went to meet my first participant, I was not expecting to get an interview. The address was in a famous neighbourhood in Amman. It has many traditional boutiques and shops mostly run by families with Palestinian roots. A great number of Palestinians left the occupied land to live in Amman where they continued their traditional craft such as shoemaking, gold accessories designing and merchandising. This neighbourhood surrounded a big shopping area where a person might window shop. This area was one of the only areas in Amman not affected by recent social and cultural changes. In my view, this area represented the surviving manifestation of the middle class in Amman.

The hospitality establishment and the nightclubbing activities: an underground sex industry

In May 2015, I returned to the same hospitality establishment that I went to in February 2015. The same persons (possibly pimps) that I observed the previous February appeared again in the lobby. Due to activities that seemed like an underground sex industry, which were a repeat of those I observed earlier, I decided to describe the situation in my research notes as part of the social and cultural observations of the city of Amman.

The lobby of the establishment where I stayed had two separate entrances to two halls. The first hall was the Western-music nightclub; most of the customers were men who do not look like young clubbers interested in dancing to Western music. A bodyguard guarded the nightclub. About five men were standing in the lobby next to the entrance of the nightclub, holding phones and making phone calls. It was clear that they were waiting for somebody to arrive. The men-guards acted like a wedding planner.

Foreign tourist groups looking for Arabic music and belly dancing mostly frequented the other hall. It was a sort of a small cabaret, which was attended by both men and women who looked like foreign tourists and who were staying at the hotel. In February 2015, I noticed a group of middle-aged tourists. They were also staying at the hospitality establishment. They looked excited about attending the belly dancing cabaret. I could tell that the belly dancing cabaret attracted tourists who did not speak Arabic. Later on, I saw one of the women who appeared to work as an artist. She came into the lobby wearing a long cloak that covered her body. She had full makeup with beautiful long hair and she was wearing high heels. She went to the restroom. When she returned, one of the men-guards told her where to go.

The belly dancing music was loud. I could hear it from the lobby. The artist, wearing the long cloak, on hearing the music, started walking to the belly dancing cabaret, while making belly dancing warm-up moves and taking off her cloak. She disappeared soon after entering the belly dancing cabaret. She must have been performing belly dancing as an artist in the belly dancing cabaret to satisfy tourist demands. I saw the men-guards, who looked like pimps, directing the young females to either enter the nightclub or the belly dancing cabaret.

The men-guards were mostly waiting for young females. These women were beautiful, wore heavy makeup and short dresses or tight jeans with short tops. In other words, they wore clothes suitable for clubbing. Their clothes were not of a style acceptable in Middle Eastern societies. As they were wearing such clothes, getting out of taxis and entering a public place, which are prohibited activities for women, suggest they were being protected.

In Amman, whether in streets, malls or public places, no one usually wears dresses exposing skin, unless they were attending a wedding ceremony or a private and closed family event.

Consequently, street soliciting is not a common method of advertisement for the sex industry in Jordan. Sexual services in Jordan are underground, in keeping with its conservative culture.

Most importantly, all of the females were young. Some of them looked Eastern European, whereas others looked Middle Eastern. I recognised the accent of one of those beautiful young women as Syrian when she asked about the ladies' room, where the women go to 'freshen up'. It seems to have been her first time at this nightclub. Each of those beautiful women entered the women's restrooms before entering the nightclub or the cabaret. At different times, the young girls moved from the nightclub to the cabaret, or the opposite, upon directions from the men-guards.

I witnessed a quarrel between one of the women and one of the men-guards in the lobby. I could not tell what the argument was about; the quarrel ended when they entered the nightclub. The woman appeared to submit to the men-guards. In general, the men-guards told most of the young women who entered the lobby what to do. The men-guards' body language was consistent with the body language of someone giving commands.

A man-guard heavily directed and guided the young women, whereas older women received fewer directions on how to act. I realised that the older women showed confidence when entering the lobby, walking quickly as they entered the restroom. They did not need to get directions from the men-guards.

Older-looking artists (the common term for women who are recruited to work in nightclubs and bars) had direct contact with the man-boss sitting on the couch. They saluted him or responded with eye contact. They looked more autonomous than the young women. I saw two women looking in their 30s or 40s who came into the nightclub wearing sportswear. Once the man-boss

saw them, he waved his arm as if to say ‘Where have you been!?’ The two women giggled and laughed, and said something I could not hear. Then the two artists entered the nightclub. I acknowledged that their body language exuded confidence.

In light of research done by the ILO, nightclubs are venues for sex trafficking of females in the Middle East, including Jordan. There are more than 40 nightclubs in the city of Amman, which run legally.¹⁶⁴ However, as there is a lack of research on sexual exploitation in nightclubs, further research is required. In the findings Chapters VI and VII, I refer to observed incidents that I did not intend to observe, but are important in filling the gap on sexual exploitation in nightclubs.

(c) *Legal documents*

The last part of the triangulated research methods is the analysis of legal discourses in the Jordanian Penal Code (JPC) and the Jordanian Human Trafficking Legislation. I interpreted the legal language via constructionist approaches, using my background as an Arab woman who already understands the JPC having studied it during my bachelor of law studies. I know that the JPC is applicable in Palestine too as Jordan has had jurisdiction over the West Bank in the past.

I have chosen to analyse legal articles related to sexual crimes due to my assumption of these legal rules as creating the influence on sex trafficking and sex work administration of justice in Jordan. I did not use all the articles as some are a continuation to a set of laws related to similar incriminated conduct. Mentioning all the articles would be repetitive. As explained in Appendix H, the articles that I analysed were found online with a translation that is neutral, omitting the

¹⁶⁴ Haroff-Tavel and Nasri, above n 28.

Arabic language (actual meaning) that is analysable using discourse analysis. I edited the translation that is used in Chapter V, and included the original translated law in Appendix H.

In the following, I demonstrate my triangular analysis methods knowing that I interpret three main sources of interactions that determine the discourse and social practice in Jordan. The first one is the legal language about sex crimes, especially sex trafficking and sex work pimping; it is the language of the JPC. The second is the social attitude towards women who are sex trafficked, sex workers, or gender-based violence survivors. The third influence is the policing of the protection of gender-based violence survivors, sex trafficked victims and the exploitation of sex workers. The second and third processes of determination of influence on sex workers and sex trafficked victims are discussed without separating them within Chapters VII and VIII.

In the next section, I summarise the theoretical framework, intersectionality, upon which the data analysis was conducted.

2 *Explaining how the information was analysed*

The triangulated influences on the policing of social justice, and protecting sex trafficked victims and exploited sex workers in Jordan are analysed in my three analysis Chapters V, VI and VII. Those three influences will be analysed as an argument that it is influenced by, and influences, the construction of gender roles. The three influences are not measured as factors to the Jordanian context. Instead, they are considered as both influenced by historical, religious, cultural, and customary rules, and influencing the present context in Jordan.

The analyses of those three constituted and constituting influences are informed by applying an intersectionality framework as described below.

Intersectionality as an approach is explained by Truscan and Bourke-Matignoni as:

both a method of observation and an action-oriented form of practice that aims to uncover and redress the workings of privilege and oppression that often remain hidden from view in the classical single-axis analyses of discrimination and inequality used by most international human rights monitoring mechanisms.¹⁶⁵

This theory explores the contextual categories of oppression that consolidate, making it hard to analyse each category of oppression or discrimination by itself. The anti-categorical approach that I employ is a methodological approach used to analyse oppression of discrimination by rejecting the categories of oppression (race, sex, class, etc...) and constructing categories of oppression according to the context in hand.¹⁶⁶ This approach enhanced the capacity of analysing the raw data from the field.

In my critical analysis, I reject the prevailing categories, especially the categories of sources of female subordination or the sources of women's oppression. I then reconstruct my understanding of the meaning and language, and policy from the legal discourse and the discourses that appear from the views of the service provider participants and the attitudes of society inferred from my unobtrusive observations. This has allowed me to capture the language and the discourse in the Jordanian social and cultural context. In this section, I introduce the themes of analysis.

In the analysis of the chosen views of service provider participants, I arranged them in themes, which emerged from their stories. I found five main themes as explained in [Appendix G](#). The first three themes of analysis are the three elements of the crime of human trafficking, which are

¹⁶⁵ Ivona Truscan and Joanna Bourke-Martignoni, 'International Human Rights Law and Intersectional Discrimination' (2016) 16 *The Equal Rights Review* 103, 104.

¹⁶⁶ See McCall, above n 75.

the means, actions and purpose of the crime. Each of these elements (themes) is explained separately. The repeated and emerging sources of discrimination, which were intersectional and complex, are mentioned in a separate theme. The perpetrators of the crime are presented in another theme by itself. Those five themes emerged from a chart, which is located in the Appendix G. Each story of the victims is presented in the chart in 19 horizontal rows with the five central themes presented in five vertical columns. In Appendix G, I present a story sample to show how I have extracted the themes.¹⁶⁷

My anti-categorical analysis was the main source of the analytic themes and categories. The categories that emerge from this thematic analysis within the intersectionality framework are dynamic, as they do not necessarily reflect the ultimate truth.

The fourth column [theme] of the chart, located in the appendices, includes sources of female subordination, women's oppression and categories of intersectional oppression that appeared in the stories. From this theme, I explain various forms of intersectional discrimination that lead to sex trafficking of females and exploitation of sex workers.

I aimed to analyse the legal discourse using Carol Smart's 'sexed body' approach.¹⁶⁸ I will interpret the language of the JPC by employing a constructionist methodological approach to discourse analysis. I use the sexed body approach, which explains how the legal language may reinforce the construction of binary oppositions and in so doing stereotype women.¹⁶⁹ Some of

¹⁶⁷ See [sample story](#) in Appendix G.

¹⁶⁸ Carol Smart, 'Law's Power, the Sexed Body and Feminist Discourse' in Carol Smart (ed), *Law, Crime and Sexuality: Essays in Feminism* (Thousand Oaks, 1995) 70.

¹⁶⁹ *Ibid.*

those divisions of women include ‘whores and Madonnas’, decent and indecent, moral and immoral.¹⁷⁰ In light of this approach, the law is considered a dominant source of discourse.

I point to articles from the JPC that refer to the gendering of women and divides them into different identities according to their sexual activities or loss of honour. I will demonstrate how the JPC would influence the social attitudes towards women who might become vulnerable to sex trafficking or exploited as sex workers.

My analysis of the data from interviews, observations and legal texts draws from feminist and cultural perspectives using techniques drawn from aspects of critical discourse analysis (CDA). Rejecting standard feminist categories of oppression and reconstructing the understanding of the discourse on women in the Jordanian context require discourse analysis of the texts and language and social action in Jordan. This is particularly important as an uneven power distribution shapes the discourse on women by those with power and influences gendered roles.

The three main perspectives within CDA analysis, which I adopt in my research, are social formation, social institutions and social actions or practices.¹⁷¹ Social formation influences (determines) the social institution; whereas the social institution influences (determines) social actions. As pointed out by Fairclough, the process of social determination is not a mechanical one. Instead, he considers the process of determination in social process to be a dialectical one.¹⁷² In other words, not only does social formation influence the social institution, but social

¹⁷⁰ Ibid.

¹⁷¹ Norman Fairclough, *Critical Discourse Analysis: The Critical Study of Language* (Longman, 1995), 37–8.

¹⁷² Ibid 38.

institution may also influence the social formation. Also, social actions may determine social institutions, and the latter determines social formation.¹⁷³

I must explain that the social institution, as defined by Fairclough, is ‘an apparatus of verbal interaction, or an order of discourse’. Fairclough demonstrated how social institutions might determine members’ verbal interactions and social practices. In my research, the service provider participants are part of a ‘speech community’ in the broader Jordanian social institution of service provision. I revisit this in Chapter VII when I explain Jordanian policy relating to protecting and providing care and support for the victims of sex trafficking. I also explain how certain powerful persons influence the formation of social practices. In addition, I explain the dialectical determination of the social practices and social formation, and the effect of these on the social institution of sheltering and servicing victims. Further, social institutions affect social actions too. However, I will explain how even social actions, which connote the actions of service providers, sex trafficked victims, sex workers and other people in the society, also determine the social institution, and therefore the social formation that keeps changing.

Intertextuality is another concept of analysis that influences my approach to the legal texts, social practices and actions, and views of the service providers. Intertextuality means:

That texts are linked to other texts, both in the past and in the present. Such connections are established in different ways: through explicit reference to a topic or main actor; through references to the same events.¹⁷⁴

¹⁷³ Ibid; Norman Fairclough, ‘A Dialectical-Relational Approach to Critical Discourse Analysis in Social Research’ in Ruth Wodak and Michael Meyer (eds), *Methods of Critical Discourse Analysis* (Sage Publications, 2nd ed, 2009) 162.

¹⁷⁴ Martin Reisigl and Ruth Wodak, ‘The Discourse-Historical Approach (Dha)’ 87, 90.

I use elements of CDA to link the legal discourse with the power relations inherent in the androcentric culture (ideology) of Jordan.¹⁷⁵ I also use CDA to examine the three triangular interactions of the legal language on sex crimes, the attitudes of people towards sex trafficked females, sex workers, gender-based violence survivors, and the policing of the protection that is provided by the government agencies and non-state actors.¹⁷⁶ The analysis Chapters V, VI and VII explains this further.

B *Summary*

In this chapter I introduced my qualitative data collection methodology and my theoretical framework of intersectionality, with feminist and cultural perspectives used to analyse my findings on constructed gender roles. The sexed body approach to the Jordanian Penal Code (JPC) to understand whether the legal language constructs gender division and stereotypes women as being either good or bad.

My data collection in the fieldwork phase, which took place in 2015 and 2016, was influenced by various approaches to information gathering with high sensitivity to situational and contextual circumstances, and to the customs and traditions of the people I met. Moreover, managing, processing and transcribing the gathered information have been achieved in light of ethical standards of doing human research that is deemed sensitive to the potential for harm to parties involved.

¹⁷⁵ See Rachel Devorah, 'Ocularcentrism, Androcentrism' (2017) 23(3) *Parallax* 305, 305; and Carol Smart, *Feminism and the Power of Law*, Sociology of Law and Crime Series (Routledge, 1989) 27–8.

¹⁷⁶ Follow the link on the [triangular interactions](#).

Chapters V, VI and VII present findings and critical analysis. [Chapter V](#) presents the legal texts as a powerful source of discourse, influenced by previous cultural ideological formations. The chapter contains an introductory material on the penal laws on sex crimes in Jordan. I analysed the policing of sex trafficking crimes as well as social attitudes towards sex trafficked victims, exploited sex workers and gender-based violence survivors. The three influences are triangulated determinations in the Jordanian context.

My analysed findings are based on the reports and opinions of the service provider participants - [Nawal](#), [Majida](#), [Rawan](#), [Dalal](#), [Mohammad](#), [Radiya](#) and [Randa](#), observed social attitudes and available legal documents (mainly the JPC and the Jordanian Human Trafficking Legislation). Transcriptions of interviews are analysed using an intersectionality framework and reported in Chapters VI and VII. In Chapter V, I summarise the legal discourse on female victims and offenders, highlighting the gendered nature of the Jordanian penal code.

Overview of the following chapters

I review the literature on sex trafficking, sexual exploitation and consensual sex work, as those terms are interrelated and debatable. I interchangeably use synonyms: sex work and prostitution; sex worker and prostitute. Their use depends on which terms the authors of papers prefer to use. However, I will use the words sex worker and sex work instead of prostitute and prostitution in my discussion, in light of my views, which emerged from reading the literature and considering the findings.

From the gathered data, a set of triangulated influences in Jordan will be demonstrated. These influences are schematised as people's attitudes to sex trafficking and sex work, the power of the

legal language in regards to sex trafficking and sex work, and policing of the protection of sex trafficking. This set of material is explained in the findings Chapters V, VI and VII.

In the findings and analysis Chapters, V, VI and VII, I draw on material from the gathered data to explore policies, treatments and views about sex trafficked females and sex workers in the Jordanian context. I do so using an anti-categorical intersectionality perspective, in which I shed light on the intersections where the violations happen and how it relates to sex trafficking and exploitation of sex workers.

Having set out the problem area in Chapter I, and the used methodology, in [Chapter II](#), I introduce my theoretical framework and methodological approach of anti-categorical intersectionality. I will explain my approaches to sexed body legal analysis. I aim to suggest the proper language change that may aid in abolishing the social and legal stigma. I also consider the literature on the Arab context on sex work, sex trafficking, feminism and honour to understand Arab ideology and their understanding of women. Nonetheless, I review formal reports and literature about sex trafficking in the Middle East and North Africa (MENA).

In [Chapter III](#), I continue the review of literature on sex trafficking from a human rights law perspective to provide a broad framework, knowing that intersectionality as a concept was confirmed in human rights law, as explained later. Then, I overview the literature on criminal justice approaches as a matter of policy sampling, in addition to introducing the feminist theories. Anne Gallagher argued that the problem of trafficking is multi-dimensional regarding the harm that it causes; it cannot be viewed as a problem that belongs only to one branch.¹⁷⁷ In

¹⁷⁷ Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010) 5.

this thesis, I argue for the need to view this issue from a human rights perspective and also from a feminist criminal justice perspective.

I review the literature on sex trafficking, sexual exploitation and sex workers in a human rights framework. Jordan has ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention on Transnational Organised Crimes* (2000), the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW) (1979) and the Human Rights bill. I will introduce the Human Rights framework, knowing that it would become an umbrella to the literature in the third and fourth chapters. This chapter will underpin the level of compliance with human rights law regarding the Jordanian sex trafficking action plan.

In Chapter IV, I review feminism and criminal justice approaches to combating sex trafficking of women. In light of feminist insights, I draw on the sex work debate, in which sex work is questioned as exploitative work. Should women be regarded as incapable of consenting to the practice, or should sex work be considered a matter of freedom of choice? I review the practices of abolition, legalisation and decriminalisation of sex work. In this chapter, I also review papers written on governance of sex work and sex trafficking in the criminal justice systems away from the sex work debate. In Chapters V, VI and VII, I introduce the laws of the Jordanian Penal Code in relation to sexual crimes using discourse and sexed body approaches, then I introduce the findings in Chapters VI and VII using intersectionality framework and CDA. Chapter VIII ties these findings and interpretations together.

In the discussion Chapter IX, I relate to the emerging themes in my research to the literature, starting with the level of compliance with human rights law and the *Trafficking Protocol*

(2000),¹⁷⁸ and the *Convention on the Elimination of all forms of Discrimination Against Women* (1979).¹⁷⁹ The discussion will be in light of the literature in Chapter II, III and IV on sex work debate, criminal justice approaches to sex trafficking and sex work, the cultural understanding of gendered roles, and the feminist critique of the situation from an intersectionality perspective. I will raise my arguments in light of the analysed findings in Chapters V, VI and VII; I will also recommend policy and legal reform that involved insights from intersectionality.

¹⁷⁸ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes*, opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

¹⁷⁹ *United Nations Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

III ARAB DISCOURSE ON WOMEN: INTERSECTIONALITY AS A FRAMEWORK

This chapter considers the importance of doing context-dependent research. I start by overviewing Arab culture and the significance of sex trafficking crimes in the Arab world and the Middle East. Most importantly, I introduce intersectionality as a context-dependent theoretical and methodological framework that considers the Arab context as in need of an exploratory approach. At the outset of Chapter III, I introduce the [umbrella of literature](#), to explain the link of this chapter to the other literature chapters.

A The Arab-women context

1 The code of honour and honour killing

Feminist insights in the Arab context are necessary for understanding and analysing the data. I have used the term Arab context rather than the Middle Eastern context, although Jordan is part of the Middle East. I focus on Arab women and their various contexts because the Arab language is widely used in the Middle East and North Africa region (MENA). The interrelated discourse among Arabic speaking countries is the reason for reviewing the literature on feminist concerns in the MENA. For my analysis, I have focused on the discourse and language used in Jordan as an Arabic-speaking country. In the Arab context, it is crucial to conceptualise honour and shame, the Arabic familial order and their patriarchal structures in light of the present status of Arab women.

Despite changes in women's status in the Arab region, which included legal and economic reforms and feminist movements, these developments did not have a positive influence on

women in the region.¹⁸⁰ Significantly, patriarchal structures in the Arab region use collective mechanisms to control women's sexuality.¹⁸¹ Control of the bodies and sexualities of Arab women was described by İlkkaracan as the most powerful tool in the hands of the patriarchal control in the region.¹⁸² Nonetheless, İlkkaracan emphasised that collective mechanisms have also contributed to gender inequality in the Arab region.¹⁸³ Hatem argued that one of the myths about the emancipation of Arab women was allowing them to get involved in the administration and governance of state agencies and offices. Hatem called this mode of governance as 'state feminism'; she considered women's inclusion as a cover to prove that a modern state guarantees the rights of women.¹⁸⁴ As cited by Hollis, Hatem argued that women in state governance included upper and middle class women only. This mode of modernised governance mainly occurred in secularist Arab countries including Jordan.¹⁸⁵

A search for an appropriate feminist approach is vital, given the dominating social norms of the Arab region. Before arguing about an appropriate feminist approach, I relate to Hoffman's point that feminist approaches and definitions may differ, but uniting them is the attempt to free women in some way.¹⁸⁶ In her paper on mapping the direction for future Arab feminism, Hatem defines feminism as a 'set of analytical and critical tools that can be used to enhance women's understanding/consciousness of themselves and their relations with other important national,

¹⁸⁰ Pinar İlkkaracan, *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Ashgate, 2008).

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ 'According to Hatem, other Secularist Arab governments are Syria, Egypt, Tunisia, Lebanon'. Mervat Hatem, 'What do women want? A Critical Mapping of Future Directions for Arab Feminism' (2013) 6(1) *Contemporary Arab Affairs* 91, 97.

¹⁸⁵ Rosemary Hollis, 'Introduction: Feminism in the Arab World: Four Perspectives' (2013) 6(1) *Contemporary Arab Affairs* 71.

¹⁸⁶ Monica Gallant, 'The Application of Feminism in the Arab World: Research Perspectives' (2008) 1(3) *Education, Business and Society: Contemporary Middle Eastern Issues* 193.

regional, international groups of men and women.¹⁸⁷ From her perspective, Hatem considers the importance of feminism to improve women's autonomy and 'inform the definition of their strategies for change'.¹⁸⁸ Foley pointed out that it is important to be sensitive to cultural differences in applying feminist theories in a certain society.¹⁸⁹ Andrews reported that various authors argued in favour of the importance of doing context-dependent research.¹⁹⁰ Therefore, I review the literature on studies done in the Arab region (MENA region); in particular, studies done in the Middle East on different topics related to women's concerns, changes of modernisation that influence the lives of Arab women, and studies related to understanding the MENA region, culture and honour.

Gallant considered Hoffman's definition of feminism as appropriate to help women define feminism and emancipate themselves in accordance with their situation and culture.¹⁹¹

Hoffman's definition contributes positively to this research regarding applying feminism to the Arab culture of honour and shame.¹⁹² In Kandiyoti's analysis of classic patriarchy, she pointed to different contexts in several regions including the Middle Eastern and North African countries to show how women had various responses, namely passive and positive resistance to the classic patriarchy.¹⁹³ She explains how women's bargaining with patriarchal structures in different contexts can reshape and renegotiate the 'gender ideology'.¹⁹⁴ She argued for a systematic

¹⁸⁷ Hatem, above n 184, 92.

¹⁸⁸ Ibid 92.

¹⁸⁹ Rebecca Foley, 'Muslim Women's Challenges to Islamic Law' (2004) 6(1) *International Feminist Journal of Politics* 53; Gallant, above n 186, 193.

¹⁹⁰ Penelope Andrews, *From Cape Town to Kabul: Rethinking Strategies for Pursuing Women's Human Rights* (Ashgate, 2012) 86.

¹⁹¹ Gallant, above n 186, 193.

¹⁹² Ibid 193.

¹⁹³ Deniz Kandiyoti, 'Bargaining with Patriarchy' (1988) 2(3) *Gender and Society* 274.

¹⁹⁴ Ibid 275.

analysis approach to different contexts, by taking into consideration women's strategies in various locations.¹⁹⁵

Many Arabic-Muslim women are afraid of the word feminism, as they associate it with Western liberal culture.¹⁹⁶ Golley refuted the argument that Arab feminism should be rejected given its association with Western ideology.¹⁹⁷ According to Gallant, the reasoning given by Muslim women on refusing feminism was that it did not comply with Islamic culture.¹⁹⁸ It is worth mentioning that many reviewed papers on Arab feminism associate their discussion of Arab feminism or Arab women with Islamic feminism or Muslim women.¹⁹⁹ Many papers discussed Arab feminism, in light of how many matters influenced its rise since colonialism, nationalism and fundamentalism.²⁰⁰

Gallant pointed to Foley's claim that the communitarian approach to theorising feminism, in which the communities' and families' rights are prioritised over the rights of individuals, is more suitable for Arab feminism in Arab countries than applying an individualistic approach to feminism.²⁰¹ According to Foley, this may be the solution to blurring the 'duality' between women and men in a society where Islamic principles, and societal and cultural norms, dominate.²⁰² Gallant demonstrates how women who ignore communitarian societal norms become marginalised from the society where they live.²⁰³ Gallant cited Lather's description of

¹⁹⁵ Ibid 285.

¹⁹⁶ Ibid.

¹⁹⁷ Nawar Al-Hassan Golley, 'Is Feminism Relevant to Arab Women?' (2004) 25(3) *Third World Quarterly* 521.

¹⁹⁸ Gallant, above n 186, 193.

¹⁹⁹ See, eg, Hatem, above n 184, 91; Gallant, above n 186, 193; Golley, above n 197, 521.

²⁰⁰ See, eg, Marnia Lazerg, 'Poststructuralist theory and Women in the Middle East: Going in Circles?' (2013) 6(1) *Contemporary Arab Affairs* 74; Golley, above n 197, 521; Tovi Fenster and Hanaa Hamdan-Saliba, 'Gender and Feminist Geographies in the Middle East' 20(4) *Gender Place and Culture* 528; Hatem, above n 184, 91.

²⁰¹ Foley, above n 189; Gallant, above n 186, 193.

²⁰² Foley, above n 189, 53.

²⁰³ Gallant, above n 186, 193.

how a woman would have to work within and against the society where she is living, and to resist the community norms in a society that create stereotypes of both genders to negotiate their own free will.²⁰⁴

Kandioti explains how in certain classic patriarchies, young women who were just married are relatively powerless in the extended family; whereas senior women (usually mothers-in-law) have more powers than the newly married young women.²⁰⁵ To have more autonomy, the newly married young girl is expected to produce male offspring.²⁰⁶ In her observations in Egypt on Muslim women who frequently go to the mosques, Mahmood pointed to the passive way in which these women teach each other, how to wear the veil, pray five times a day and submit to God, and sought to challenge social injustice.²⁰⁷ Gallant argued that creating a substitute discourse can help in founding power and agency for oneself.²⁰⁸

Conceptualising and understanding power relations in a patriarchal society may help women to know how to resist the power structure.²⁰⁹ However, seeing women's way of showing resistance does not help in understanding the context in hand. Consequently, I review honour as a concept, which has a particular reference in Arab patriarchal societies. Arab patriarchy is determined by diverse family values in Arab societies; however, specific familial rules are widely shared among Arab societies.²¹⁰ Arab patriarchy lies within strong family ties. Joseph demonstrated that male superordination requires that the female in an Arab family would have to respect and obey their

²⁰⁴ Ibid; Patricia Lather, *Feminist Research in Education: Within/Against* (Deakin University, 1991).

²⁰⁵ Kandiyoti, above n 193, 279.

²⁰⁶ Kandiyoti, above n 193, 279.

²⁰⁷ Saba Mahmood, 'Feminist Theory, Embodiment, and the Docile Agent: Some Reflections on the Egyptian Islamic Revival' (2001) 16(2) *Cultural Anthropology* 202.

²⁰⁸ Gallant, above n 186, 193

²⁰⁹ Mahmood, above n 207, 202.

²¹⁰ Joseph, above n 120.

fathers, brothers and uncles. The elder male [father, brother or uncle] is obliged to protect their female kin.

The role of honour and shame in the Arab societies is explained in different scholarly papers.²¹¹ Joseph described how the concept of honour regulates the behaviour of family members; it particularly controls the behaviour of women to protect them.²¹² Women are considered incapable of becoming satisfied regarding their sexuality; therefore, they need paternal protection.²¹³ Latreille focused on subordinate relations of females and their families, including the kin and the husband in the MENA region. Delaney viewed the rules of honour in the ‘indigenous theory of procreation’ to be conceptualised and understood as a ‘cultural representation whose stake is the legitimacy of paternity’.²¹⁴ Latreille argued that Delaney analysed the case of honour in a man and wife relationship only. She does not include the case of the daughter relationship regarding honour and getting pregnant before marriage. Regarding my case study, both relationships, husband and wife, and the female and her male kin, are relevant for further exploring the code of honour.

In the MENA region, women’s morality and behaviour are scrutinised.²¹⁵ *Hishma* refers to the modesty of the woman that complements her honour.²¹⁶ Included also is the status of a person, which was related to ‘individual reputation and their inscription into a hierarchy’; individual reputation revolved around two aspects in Latreille’s analysis: first is the prestige of the person that is seen as the positive point of the reputation; second is the negative aspect called

²¹¹ See Martin Latreille, ‘Honor, the Gender Division of Labor, and the Status of Women in Rural Tunisia – a Social Organizational Reading’ (2008) 40(4) *International Journal of Middle East Studies* 599; and Joseph, above n 120.

²¹² Joseph, above n 120.

²¹³ Ibid.

²¹⁴ Latreille, above n 211, 606.

²¹⁵ Ibid.

²¹⁶ Ibid.

‘shame’²¹⁷. The author demonstrated how the capacity to comply with social norms is also ranked by peers, thereby creating the hierarchy for individuals according to their reputation. All of the above values surround how a person represents herself in a social context.

Honour, as explained by Latreille, also affects the social structure of families in a town or village.²¹⁸ Women are seen as protecting the male’s (husband) prestige in society. As a consequence of this social norm, women are veiled, married early and separated from male labourers.²¹⁹ This scenario, which contributes to women’s vulnerability, would make a fitting introduction to understanding how the code of honour might trigger social stigma and marginalise female groups that break its rules.

The concept of honour in Arab societies should be pinpointed to understand Arab familial order and patriarchy, and honour killings. According to Joseph, honour is the most widely known Arab Familial value at international levels.²²⁰ For O’Connell Davidson, honour is considered ‘an intimate personal quality relating to both his physical and characterologic attributes’.²²¹ Latreille illustrated the spatial dimension, noting the gendered separation of public and private spaces. Women who remain in the household preserve the so-called prestige, more so than women who participate in the public sphere.²²² O’Connell Davidson cited Patterson on how honour and power are related, however, they are not the same.²²³ Not only is power employed to protect honour, but the sense of honour is what drives a person to acquire power. Both O’Connell Davidson’s and Patterson’s explanation of the relation between honour and power would expand

²¹⁷ Ibid 600.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Julia O’Connell Davidson, *Prostitution, Power and Freedom* (Polity, 1998) 184.

²²² Latreille, above n 211. 599.

²²³ O’Connell Davidson, above n 221, 184.

on the specific meaning of honour in Arab societies where a set of rules reflect gendered roles to preserve the prestige of a family or an individual.

Sen schematised the dynamics of honour and dishonour. First she demonstrates that honour is vested in a person, a family, or a tribe, collective.²²⁴ Then she lists the actions of a female that constitute dishonouring actions, and may include having a boyfriend. The dynamics of honour and dishonour require actions that are considered to modify the dishonouring behaviour of the female kin by forcing the female to get married or by killing her.²²⁵

Honour killings are a result of an individual infringement of the code of honour in Middle Eastern societies, including Arab societies. Honour killings constitute gender-based violence that may jeopardise the life of a marginalised woman. Welchman and Hossain explain how honour killing is one of the manifestations of the crimes of honour;²²⁶ honour killing is justified as to preserve the honour of the (extended) family.²²⁷ As cited by Steinke, anthropologist Unni Wikan gave a gender-specific definition of honour killing as ‘murder carried out as a commission from the extended family, to restore honour after the family has been dishonored’.²²⁸ As a rule, the basic cause is a rumour that any female family member has behaved in an immoral way.²²⁹ This definition shows the specificity of honour killing to females; that is, whether they were killed by kin following the loss of her virginity while she was single or on her wedding night. Abu-Odeh described honour killings as the killing of the female for losing her virginity; the sign for losing

²²⁴ Purna Sen, ‘‘Crimes of Honour’, Value and Meaning’ in Lynn Welchman and Sara Hossain (eds) *Violence against Women* (Spinifex Press, GB,2005) 42, 47.

²²⁵ Ibid.

²²⁶ Lynn Welchman and Sara Hossain, ‘Introduction: ‘Honour’ Rights and Wrongs’ in Lynn Welchman and Sara Hossain (eds) *Violence against Women* (Spinifex Press, GB,2005) 1, 4.

²²⁷ Ibid.

²²⁸ Caitlin Steinke, ‘Male Asylum Applicants Who Fear Becoming the Victims of Honour Killings: The Case for Gender Equality’ (2013) 17(1) *City University of New York Law Review* 233, 237.

²²⁹ Ibid.

her virginity is the absence of hymen-bleeding on her wedding night.²³⁰ Abu-Odeh explains that the hymen becomes a social and physical mark that defines the reputation and virtue of a woman who is about to perform sex on the wedding night.²³¹

A worldwide estimation shows that only 7 percent of victims of honour killing are men.²³² A gender-neutral definition can reflect the role of honour and shame on how it would determine gender roles. Steinke recently introduced a gender-neutral definition following the first case of honour killing against a male victim in Turkey for being gay. She defined honour killing as ‘a form of premeditated murder with a unique motivation: to cleanse the dishonour that has been cast upon the perpetrator’s family as a result of the actions (real or perceived) of the victim’.²³³ This definition confirms the importance of a family’s prestige in Arab societies.

Zuhur introduced an analysis of the word honour regarding honour killing.²³⁴ She discussed the effects of cultural understandings and familiar norms on the concept of honour and what it entails; this influenced the drafting of the penal codes of Middle Eastern countries. In her analysis, she introduced two terms used in the Arabic language: *ardh* and *sharaf*. She explained that women’s sexual morality is her *ardh*. On the other hand, *sharaf* is a virtue that men of a family or a tribe possess a good reputation and their generosity and power position.²³⁵ If a female loses her honour; the whole family loses their honour. She pointed to the act of killing the female as a method to cleanse the honour of the family or tribe to preserve their honour.²³⁶ Both Zhuhur

²³⁰ Lama Abu-Odeh, ‘Honor Killings and the Construction of Gender in Arab Societies’ (2010) 58 *American Journal of Comparative Law* 911.

²³¹ Ibid.

²³² Steinke, above n 228, 238.

²³³ Ibid 234.

²³⁴ Sherifa Zuhur, ‘Criminal Law, Women and Sexuality in the Middle East’ in Pinar İlkkaracan (ed), *Deconstructing Sexuality in the Middle East: Challenges and Discourses* (Routledge, 2008).

²³⁵ Ibid.

²³⁶ Ibid.

and Abu Odeh criticised Arab countries' penal laws on the rules of exemption from punishment for the kin if he kills the female kin because she had sex with a man outside marriage.²³⁷

From an intersectional perspective, honour-based killing is considered to be gender-based violence.²³⁸ However, Anthias notes that honour based killing differs from gender-based violence as the former is a crime of anger committed by the family as a whole including the mother and the victim's siblings.²³⁹ The crime of honour is also known as the crime of passion. In her analysis, Anthias explained that honour based killing is:

Dependent on patriarchal forms of control and highly gendered notions of appropriate feminine and masculine roles and practices which of course differ within different social and cultural and national contexts.²⁴⁰

The Ottoman [Majalleh], which was the source of civil and criminal laws in the 19th and 20th centuries, is, to an extent, standing behind the legal discourse and language used in most Middle Eastern countries.²⁴¹ Zuhur reported the influence of familial norms and religious scripts on the penal codes of the Middle East.²⁴² In 2011, an amendment to the *Jordanian Penal Code* (1960) (JPC) was made to have harsher penalties, in addition to repealing specific exemptions. For instance, article 340 of the JPC includes an exemption of punishment for the husband who kills his wife and her lover if they were found engaging in sexual activities.²⁴³ The provision was

²³⁷ Abu-Odeh, above n 230, 911; Zuhur, above n 234.

²³⁸ Anthias, above n 29, 153–71.

²³⁹ Ibid.

²⁴⁰ Ibid 162.

²⁴¹ [Macelle]; see Dror Ze'evi, *Producing Desire : Changing Sexual Discourse in the Ottoman Middle East, 1500-1900* (University of California Press, 2006) 51.

²⁴² Zuhur, above n 234.

²⁴³ Abu-Odeh, above n 230, 911.

repealed after condemnation by women's rights movements in Jordan.²⁴⁴ The killing is called killing on the basis of honour, also known as crimes of passion or crimes of anger.²⁴⁵

Honour killing in modernised Arab countries' penal codes also tend to consider honour killing as a crime of honour/passion.²⁴⁶ Abu-Odeh argued that gendered roles were constituted and reconstituted as a set of 'triangular interaction' between three influences on honour killings.²⁴⁷ These triangulated influences are the practice of honour killing, state regulation of the so-called crime of honour and the response of contemporary men and women to violence [honour killings]. The triangulation between the interactions of the society, criminal laws and the attitude of men and women to honour crimes shows how the interactions in a social context would influence not only honour crimes, but other domestic-violence patterns. According to Hassan and Welchman's analysis of legal rules on honour killings in Jordan, the legal texts, judicial interpretations and community soft-laws have a great impact by limiting the freedoms of females.²⁴⁸ As this research explores the influences on sex trafficking and the exploitation of females in the sex industry, I review the trafficking of women in the MENA region regarding the influences of different interaction, including the code of honour, ideologies, practices, behaviours and legal texts.

²⁴⁴ Zuhur, above n 234; see also Reem Abu Hassan and Lynn Welchman, 'Changing the Rules? Developments on 'Crimes of Honour' in Jordan', Lynn Welchman and Sara Hossain (eds) *Violence against Women* (Spinifex Press, GB,2005) 199, 201–4.

²⁴⁵ Ibid; see also Anthias, above n 29, 163.

²⁴⁶ Abu-Odeh, above n 230.

²⁴⁷ Ibid.

²⁴⁸ Reem Abu Hassan and Lynn Welchman, 'Changing the Rules? Developments on 'Crimes of Honour' in Jordan', Lynn Welchman and Sara Hossain (eds) *Violence against Women* (Spinifex Press, GB,2005) 199.

Most of the laws of the MENA region do not distinguish between sex trafficking and labour trafficking except for Egypt and Lebanon.²⁴⁹ Most laws do not provide a clear distinction between prostitution and sex trafficking, though most of the countries of the MENA, except for Morocco, have ratified the Trafficking Protocol.²⁵⁰ In the Arab world, the criminalisation of certain sexual conduct is informed by cultural and traditional background practices.

Most MENA countries prohibit sex work. Notwithstanding, they do not have a specific law that criminalises the act of prostitution.²⁵¹ In fact, prohibition refers to prohibiting sexual intercourse outside marriage. The criminalisation of sexual intercourse or some sexual conduct led to the prohibition of the sex work industry, which includes sexual relations. Not only does it result in criminalising prostitution, but it also results in criminalising street soliciting.²⁵² As suggested in the Thomson Reuters' publication in 2012, the categorisation of the MENA countries in the prohibition regimes was due to criminalising the act of sex in most of the countries of this region; this resulted in incriminating prostitution-related conduct.²⁵³

Criminalising sex outside marriage originated from Shari'ah law. In Saudi Arabia, Shari'ah law is a primary direct source of criminalisation of sex outside marriage. However, in Middle Eastern countries like Jordan, Shari'ah law is not directly a source of law that extends or supersedes the

²⁴⁹ Haroff-Tavel and Alix Nasri, above n 28.

²⁵⁰ *Overview of Trafficking and Prostitution Law in the Middle East and Africa* (Thomson Reuters Foundation, 2012).

²⁵¹ See Y Mattar, 'Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses. (A Look at the Middle East: Challenges and Legal Perspectives)' (2003) 26(3) *Fordham International Law Journal* 721, 721.

²⁵² *Overview of Trafficking and Prostitution Law in the Middle East and Africa* (Thomson Reuters Foundation, 2012).

²⁵³ *Ibid.*

penal code; the application of Shari'ah law applies only to the family law.²⁵⁴ Therefore, sexual intercourse outside marriage is criminalised under legislated penal codes. Exemption from prosecution is not available for victims of crimes that are related to prostitution for some of the MENA countries. However, Jordanian laws provide an exemption from previous convictions for the victims of sex trafficking crimes.²⁵⁵ Egypt, Lebanon and Qatar provide similar exemptions and exonerations for the victims of sex trafficking.²⁵⁶

According to Thomson Reuters' report, all of the surveyed MENA countries prohibit profiting from sex work.²⁵⁷ Nevertheless, the Egyptian regime increased the penalty for offenders in the crime of prostitution if they are the kin of the prostituted victim. As demonstrated in the report, the kin of the victim is the person who holds responsibility for the victim's upbringing or has a responsibility or an authority over the victim. The increase of the penalty for the kin was legislated in response to frequent summer marriages or temporary marriages in Egypt, in which the parents of the girl gets money from the new husband in return for marrying her for temporary pleasure. This form of marriage is legitimate as it is built on a sham-marriage contract.²⁵⁸

The distinction between the two forms of prostitution, in brothels and street soliciting, was not provided for in most of the MENA region's laws.²⁵⁹ This fact was also confirmed by Al-Riahi, who remarked that Arab legislation did not have a detailed definition of terms related to sex

²⁵⁴ İlkkaracan, above n 190.

²⁵⁵ *Overview of Trafficking and Prostitution Law in the Middle East and Africa* (Thomson Reuters Foundation, 2012).

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ See Aurélie Bezault et al, *Sexual Exploitation: A Growing Menace* (2014) Fondation Scelles <http://www.fondationscelles.org/pdf/rapport_mondial/Sexual%20exploitation_A%20growing%20menace_Fondation_Scelles_RM3_ENG_04_03_2014_files/Sexual_exploitation_A_growing_menace_Fondation_Scelles_RM3_ENG_04_03_2014.htm#_Toc381602462>.

²⁵⁹ *Overview of Trafficking and Prostitution Law in the Middle East and Africa* (Thomson Reuters Foundation, 2012).

crimes. For instance, she pointed out that terms like prostitution, debauchery, perversion and obscenity were frequently used without differentiation. Regarding its consideration of sexual acts, Al-Riahi divided Arab legislation into three tiers for defining prostitution-related crimes.²⁶⁰ The first group had a detailed definition of sexual acts including prostitution and sexual intercourse (Oman, Yemen). The second gives a general and brief description of the phenomena (Morocco). The third has the task of deciding the criminality of the sexual act regarding describing and characterising the act.

The first group included the Omani law, which gives a detailed description of sexual intercourse. The definition that appears in the Omani Penal Code in Article 219 states: ‘Sexual Intercourse or the act of Debauchery occurs when the male sexual organ enters the female’s organ, even to the least degree and regardless of whether semen is emitted’.²⁶¹ The Yemeni Penal Code was described by Al-Riahi as a general definition because it relies on normative standards, and ethical and religious heritage to emphasise the elements of debauchery and prostitution.

Morocco produced the second batch of Arab legislation that failed to offer a detailed definition and a clear description of the sexual relationship or the elements of this crime. Al-Riahi stated that the Moroccan Penal Code stipulates that unlawful ‘sexual relationships’ are a crime of depravity if conducted between unmarried couples. The law did not define ‘depravity’ and ‘sexual intercourse’. According to the Fondation Scelles report, Morocco criminalises all parties involved in prostitution, including the sex worker, the client and the procurers. However, they

²⁶⁰ Al-Riahi, Nada Al-Riahi, ‘Prostitution in the Arab World: A Legal Study of Arab Legislation’ (Working Paper Prepared for the Middle East and North Africa Regional Consultation of the Global Commission on HIV and the Law, 2011) 1–26.

²⁶¹ Ibid.

criminalise the sex worker, regardless of whether she was forced or not. Morocco is one of the only Arab countries that did pass legislation criminalising the crime of human trafficking.²⁶²

The third group, which included Jordan, Libya, Lebanon, Palestine, Kuwait, the United Arab Emirates and Tunisia, lacked a detailed definition in the code. This group left the burden of defining prostitution to the courts in accordance with the issues and the findings of each case.

In Lebanon, prostitution is not legalised, but certain sexual relations that are related to the work of artists are legalised in Lebanon.²⁶³ Since prostitution has flourished in Lebanon, the permitted artists are obliged to have a monthly medical examination. As explained in the previous chapter, Tunisia had a regulatory regime that recently banned sex work. Al-Riahi recommended that Arab countries in the MENA region should follow the previous Tunisian regulation of sex work to protect better the victims of sex trafficking.²⁶⁴

Every Arab country in the MENA region has a unique situation when it comes to forms of exploitation of victims. These include sex tourism, social stigma or loss of honour, which lead to threatening the victim with informing the family; coercing and deceiving migrating females to work in nightclubs and bars; exploiting vulnerable refugee status for prostitution; and forcing the wife to work in the prostitution business for profit.²⁶⁵ Regardless of whether prostitution is criminalised or not, the sex industry and forms of prostitution flourish in each country, despite its local context. Some of those industries flourish in refugee camps where young girls and women are vulnerable to exploitation.²⁶⁶ Although nightclubs and bars may legally operate, an

²⁶² *Overview of Trafficking and Prostitution Law in the Middle East and Africa* (Thomson Reuters Foundation, 2012).

²⁶³ Bezault et al, above n 258.

²⁶⁴ Ibid.

²⁶⁵ See Haroff-Tavel and Nasri, above n 28.

²⁶⁶ Healy, above n 22.

underground industry for sex work that is criminalised in most of the MENA countries remains hidden.²⁶⁷ As described by the report of Fondation Scelles, nightclubs in the Middle East are ‘typical places in the Middle East, which are halfway between a strip club and a brothel’.²⁶⁸

According to Haroff-Tavel and Nasri, the methods of coercion used upon the sex trafficked victims to practise sex work included the manipulation of the debt, the withholding of salary and physically trapping the sex worker.²⁶⁹ The paper has shown examples of these methods of coercion; the exploiters may threaten the victim by exposing her to her family, which might kill her for losing her virginity and practising sex work. Moreover, cultural barriers involving social stigma may impede the sex worker from finding a job in other industries.²⁷⁰

A case that Haroff-Tavel and Nasri mentioned referred to what happened in Dubai to three Nigerian victims who entered Dubai on a tourist visa.²⁷¹ The defendants deceived them. After their arrival, the defendants offered to erase one of the girl’s travel debt of 60,000 Arab Emirates Dinars if she provided sexual services to customers; the victim refused as she was a virgin. The defendant forced her to have sexual intercourse with a man from her nation (Nigeria).²⁷²

According to the authors, the defendant did a similar thing to the other two girls. He then forced the victims to provide services for men of different nationalities. The fact that the defendant forced the victims to lose their virginity has relevance for this study, and to whether this can be a method of stigmatising victims.²⁷³

²⁶⁷ Bezault et al, above n 258.

²⁶⁸ Ibid.

²⁶⁹ Haroff-Tavel and Nasri, above n 28.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid.

Speaking of vulnerability, in some cases, a man may ask a woman's kin, usually the father, for her hand in marriage. The new husband takes the new wife abroad to force her to provide commercial sexual services.²⁷⁴ According to Haroff-Tavel and Nasri, it is not clear whether the father is aware that his daughter is going to be sexually exploited for profit. Newly-wedded victims are frequently taken from Syria, Egypt or Iraq to neighbouring countries in the same region.²⁷⁵ The vulnerability status of the victims and their families can be triggered in situations of armed conflicts and poverty.²⁷⁶ For instance, poor families may send their daughters abroad to work. The intermediaries or the agents who are involved in trafficking networks deceive the fathers about the nature of the job. Their daughters end up being sex trafficked.²⁷⁷

According to Haroff-Tavel and Nasri, the cases of sex trafficking crimes against women could not be generalised.²⁷⁸ The parties involved in recruiting women to work in the sex work industry, regardless of the methods used or whether the female consents to providing the services, include a wide range of actors and intermediaries. Included are taxi drivers and lovers.²⁷⁹ The 'freelance agents', as demonstrated by Haroff-Tavel and Nasri, are the mediators who arrange visas for the victim to migrate to the country of destination to work in other industries.²⁸⁰ Moreover, family members and husbands can be the mediators who convince the victim to travel abroad to work in the destination country.²⁸¹ Haroff-Tavel and Nasri remarked that women who are recruited to work in nightclubs and bars in the Middle East are called artists.²⁸²

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Healy, above n 22.

²⁷⁷ Haroff-Tavel and Nasri, above n 28.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid 63.

²⁸¹ Ibid.

²⁸² Ibid.

Nightclubs of the Middle East fall between strip clubs and brothels. It is assumed they are connected to the underground sex industry.²⁸³ About Jordan, Haroff-Tavel and Nasri's study showed that the Jordanian Women's Union has dealt with cases of deception and sexual coercion with victims from Morocco and Tunisia.²⁸⁴ These women agreed via the internet to work as waitresses and secretaries. Upon arrival, these immigrating women are forced to work in nightclubs. Women who come to work in the entertainment industry in the Middle East are usually nationals of Morocco, Tunisia, Belarus, Russia, Ukraine, Egypt, Iraq and Syria.²⁸⁵

Nightclubs in the Middle Eastern countries differ from one country to the other regarding the legality of functioning and the regulatory scheme. The literature suggests that nightclubs are linked to underground sex work.²⁸⁶ According to a nightclub owner in Jordan, there are about 30 Russian nightclubs and 30 Arab nightclubs.²⁸⁷ Russian nightclubs cater for high tech professionals and artists from Belarus, Moldova, Russia, Ukraine and Uzbekistan; they play Western music. On the other hand, Arab nightclubs play local and Arabic music, and employ local and Arabic artists of different nationalities. These artists are originally from Egypt, Syria, Morocco, Lebanon and Jordan, mainly from the local cities Irbid and Karak.²⁸⁸ A study done by Al-Rifai pointed to gypsies of the Middle East as an ethnic group that practices dancing and acrobats as professions.²⁸⁹

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ See Bezault et al, above n 258; see also Haroff-Tavel and Nasri, above n 28.

²⁸⁷ Haroff-Tavel and Nasri, above n 28, 78.

²⁸⁸ Ibid.

²⁸⁹ Marwan Al-Absi and Eva Al-Absiová, 'Conflict of Identity Narratives and Inclusive Language of Global Ethics' (2014) 8(1) *Annual of Language and Politics and Politics of Identity* 79.

It is difficult to obtain an artist visa from Jordan. Obtaining a tourist visa to come to Jordan is easier. According to Haroff-Tavel and Nasri, in any year, there were approximately 800 visas issued in Jordan. About 100 visas are for females who come to work as waitresses and four to five visas are issued for entertainment industry work as artists.²⁹⁰ Haroff-Tavel and Nasri emphasise that those who work as artists apply for a tourist and waitressing visa.²⁹¹

In Lebanon, there are three types of nightclubs: super nightclubs, nightclubs and bars.²⁹² The kind of entertainment club where foreign artists can work is the ‘super nightclubs’; they obtain an ‘artist’s visa to work in super nightclubs.’²⁹³ The customers who frequent super nightclubs can choose the ‘artist’ they prefer. The customer pays the price of a bottle of that ranges from US\$70–80. In return, he can choose his dancer. The customer is limited to kissing the ‘artist’. The super nightclub forbids the client from taking any further liberties for fear of risking infringements that might result in closing the business or paying a fine to immigration services.²⁹⁴

According to the report of Fondation Scelles, prostitution in super nightclubs follows the purchase of the bottle of champagne.²⁹⁵ This is a very common kind of sex tourism in Lebanon. Men from the Arab Gulf frequently travel to Lebanon in the summer to purchase this kind of service.²⁹⁶ According to Haroff-Tavel and Nasri, there were 1300–1400 artists working in the entertainment industry at any time in 2010 and live in a 2–3 star hotel in Lebanon.²⁹⁷ Haroff-

²⁹⁰ Haroff-Tavel and Nasri, above n 28.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid 64.

²⁹⁴ Bezault et al, above n 258.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Haroff-Tavel and Nasri, above n 28.

Tavel and Nasri emphasised the same sexual service, described by the 3rd annual report of Fondation Scelles (*Scelles Foundation*) to be given by artists.²⁹⁸ A customer who was interviewed in Haroff-Tavel and Nasri's research said, 'artists' were being paid US\$5 for every bottle of drink they serve. Nonetheless, the monthly salary of these artists may range from US\$800–1800 depending on their age and beauty.²⁹⁹

In Egypt, one of the most common forms of sexual exploitation is the 'temporary marriage', also known as 'summer marriages'.³⁰⁰ Poor Egyptian families marry their daughters to rich foreigners who come from the Gulf for temporary marriages during summer. These rich Gulf men offer presents and money for the family of the bride in return for marrying her. Since temporary marriages are not legally binding, the foreign Gulf husband subsequently abandons the young girl, who then becomes stigmatised and shunned by her own Egyptian community. This marginalisation compels her to travel to the Arab Gulf to work as a slave or become a vulnerable street child in Egypt.³⁰¹ According to the Fondation Scelles report, in an attempt to fight these practices in Egypt, Egyptian law bans foreigners from marrying local Egyptian women if she was younger than the foreign husband by more than ten years.³⁰²

According to the third global report 'Sexual Exploitation; A Growing Menace', in Morocco, between 2011 and 2012 the number of immigrants increased due to the 'Arab Spring'.³⁰³ People smugglers have played a major role in the trafficking and exploiting migrating women, by knowing that these trans-immigrants are usually heading to Europe, which constricts its borders

²⁹⁸ Haroff-Tavel and Nasri, above n 28.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Bezault et al, above n 258.

³⁰² Ibid.

³⁰³ Ibid.

causing these immigrants to become trapped in Morocco.³⁰⁴ As noted in this recent report, illegal people smugglers request a higher rate from women to smuggle them.³⁰⁵ Some of these refugee women who cannot pay the smuggling fees would risk getting left behind by the smugglers; these women have been sexually exploited or prostituted to pay off the smuggling fees to the smuggler.³⁰⁶ Smuggled women often become pregnant and deliver ‘mixed race children’. As a consequence, the smuggled immigrant, who usually belongs to the sub-Saharan communities or the Arab Moroccan communities, is rejected and abandoned by her own community.³⁰⁷ As a result of being stigmatised and left behind, these women become easy prey for trafficking and exploitation. Those trans-migrant women have become a tourist attraction for prostitution (sex tourism).³⁰⁸

As explained earlier, Syrian refugees are particularly vulnerable to sex trafficking and exploitation, in addition to experiencing early and forced marriage. Several reports indicate the effect of the Syrian wars on the status of Syrian refugee females. In Jordan, female refugees are considered to be more likely to be married earlier than Jordanian females.³⁰⁹

Having explained forms of sex trafficking, the perpetrators’ role, the means of trafficking, and the causes of vulnerability of females in varying contexts of exploitation in the Arab world, I consider feminist approaches to studying third world feminism. In the following, I introduce my theoretical approach of intersectionality as being influenced by postmodern approaches so as to

³⁰⁴ Ibid.

³⁰⁵ ‘Smugglers require a rate of fees of around 206 US\$ from a woman, while they only take 76US\$ from a man to smuggle them through the boarders’: *ibid.*

³⁰⁶ Aurélie Bezault et al, above n 258.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ See Claire Healy, ‘Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons; A Study of Syrian, Turkey, Lebanon, Jordan and Iraq’ (Research Paper, International Centre for Migration Policy Development, December 2015).

understand sex trafficking in the Jordanian Arab context. Many complexities need to be taken into account in choosing a theoretical framework, including honour and honour killing, social stigma and marginalisation, Arab family structures and power, immigration and female-refugees' vulnerability.

B Approaching Feminist Concerns: Introducing Intersectionality

This section outlines the theoretical framework of intersectionality, and explains further about the methodological framework of doing anti-categorical approach, which was introduced in Chapter I. My anti-categorical approach seeks to deconstruct the categories of female oppression and reconstructs an understanding from the context via discourse analysis. Understanding the conservative nature of the Middle Eastern culture and the code of honour, and the complex regional situation in Arab countries and the Middle East, will contribute in informing policies and legal reform to protect women involved in sex trafficking and sexual exploitation. The complexity of the issue of sex trafficking in Jordan requires a theoretical framework that could aid in answering the research question.

It should be clear at this stage that I discuss deconstructive approaches in this section due to its influence as a methodological approach only, not as a theoretical approach. Since my intersectionality approach is anti-categorical, it rejects and deconstructs already set up categories.

Harrison explained the relationship and difference between discourse and deconstructive theories.³¹⁰ Discourse seeks to ‘reconstruct the presupposition of rational argumentation’.³¹¹ On the other hand, deconstruction tries to understand the link between reason and speech, in addition ‘to radically put into question what discourse sought to ground’.³¹² According to Duyfhuizen, a deconstructive approach to feminism ‘seeks to break with the rigidly rational, objective, and referential style that has been privileged by the “fathers” of rhetoric as the only discourse for communication of truth.’³¹³ Deconstructive and discourse approaches used in this thesis are of methodological influence only (not theoretical), since they represent my anti-categorical approach.

Smart, who introduced the ‘sexed body’ approach, addresses the issue of truth and its relationship to law, and how law is conceived to represent truth: law can provide a powerful and authoritative stand regarding the gendered role of a woman in legal discourse.³¹⁴ Smart also draws on the binary opposition in building her sexed body approach. She draws on the construction of binary oppositions like ‘active/passive, truth/lie, culture/nature, rationality/emotionality, man/woman’.³¹⁵ She explains how these binary oppositions are not

³¹⁰ Paul Harrison, ‘Writing and Discourse: The Problem of Socrates in Deconstruction and Discourse Theory’ in Andrew Milner and Chris Worth (ed), *Discourse and Difference: Post-Structuralism, Feminism and the Moment of History* (The Centre for General and Comparative Literature, Monash University, 1990) 29; Deconstruction is an approach that was developed in the writings of Derrida, ‘Of Grammatology’, in his analysis of Heidegger’s ‘destruction’. Derrida concluded an analysis of the relationship between language and writing: see Arthur Bradley, *Derrida’s Of Grammatology: An Edinburgh Philosophical Guide* (Edinburgh University Press, 2008); see also Jacques Derrida, *Of Grammatology* (Johns Hopkins University Press, 1st American ed. ed, 1976); and see Chung Chin-Yi, ‘The Deconstruction Theory of Derrida and Heidegger: A Study’ (2010) 6(1) *The Indian Review of World Literature in English* 1–13; Chung Chin-Yi, ‘The Relation of Derrida’s Deconstruction to Heidegger’s Destruction: Some Notes’ (2009) 1(1) *The Indian Review of World Literature in English* 92–106.

³¹¹ Harrison, above n 310, 29.

³¹² Ibid.

³¹³ Bernard Duyfhuizen, ‘Deconstruction and Feminist Literary Theory’ (1984) 3(1/2) *Tulsa Studies in Women’s Literature* 159–69.

³¹⁴ Smart, above n 175; Carol Smart, *Law, Crime and Sexuality: Essays in Feminism* (Thousand Oaks, 1995).

³¹⁵ Smart, above n 175, 33; Binary oppositions were introduced by Derrida in his explanation of how ‘metaphysics of presence’ which operate via ‘erecting a series of binary oppositions. The binary oppositions include an infinite list

even.³¹⁶ As explained earlier in Chapter I, I analyse the legal text of the JPC and point out the whores/madonnas or moral/immoral binary oppositions that are created for females. Regarding honour value, I believe that women can also be stereotyped and divided into honourable/dishonourable categories. This is what I concluded from reading the schematised dynamics of honour and dishonour that were addressed by Sen.³¹⁷ Women are assigned with a code to follow to preserve their honourable manifest. If the rules of behaviour are broken she is seen as dishonourable.³¹⁸

Several feminist writings, including within the criminology discipline, have based their argument on a deconstructive approach. If the researcher chooses not to pick a mainstream feminist theoretical framework, such as Liberal or Marxist feminist theories, he or she must approach it using a postmodern or deconstructive feminism.³¹⁹ Gatens argued:

If previous feminists had not attempted to use dominant theories to explicate women's socio-political status, the difficulties inherent in that project would not have come to light. Deconstructive feminisms assume and respond to these difficulties.³²⁰

Mohanty argued that for an appropriate discussion of the intellectual and political spheres regarding experiences of third world women and feminism, one must deconstruct the already constructed categories of subordination and reconstruct an analysis on the grounds of the context women are experiencing.³²¹ Mohanty wrote:

of values with binary opposing terms: see Arthur Bradley, *Derrida's Of Grammatology: An Edinburgh Philosophical Guide* (Edinburgh University Press, 2008).

³¹⁶ Smart, above n 175, 33.

³¹⁷ Sen, above n 224, 47.

³¹⁸ See Ibid.

³¹⁹ Moira Gatens, *Imaginary Bodies: Ethics, Power, and Corporeality* (Routledge, 1996) 60–3.

³²⁰ Ibid 63.

³²¹ Chandra Talpade Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres (eds), *Third World Feminism and the Politics of Feminism* (Indiana University Press, 1991) 51.

Any discussion of the intellectual and political construction of ‘third world feminisms’ must address itself to two simultaneous projects: the internal critique of hegemonic ‘Western’ feminisms, and the formulation of autonomous, geographically, historically, and culturally grounded feminist concerns and strategies, the first project is one of deconstructing and dismantling; the second, one of building and constructing.³²²

Andrews referred to various feminist legal theorists’ approaches to women’s concerns from a contextual approach.³²³ For instance, Andrews pointed to Louise Halper’s approach to researching feminist concerns.³²⁴ She also referred to Isabelle Gunning’s approach to understanding in context ‘women’s empowerment, rights and dignity’ instead of other Western philosophies.³²⁵

Intersectionality theory and its relation to deconstructive approaches inform why I have framed intersectionality as a basic approach for my study. Intersectionality as an approach to understanding gender-based violence in intersecting sources of oppression was referred to by the CEDAW Committee.³²⁶

The complexity and intersectional sources of women’s oppression require an understanding of the discourse in a given context. Intersectionality is an approach that allows analyses of contextual sources of female subordination and oppression of women. Intersectionality was first referred to by Kimberle Crenshaw in 1989 in her publication ‘Demarginalizing the Intersection of Race and Sex’.³²⁷ Crenshaw argued that any analysis of black women’s subordination must

³²² Ibid 51.

³²³ Andrews, above n 190, 48–9.

³²⁴ See Louise Halper, ‘Law and Women’s Agency in Post-Revolutionary Iran’ (2005) 28 *Harvard women’s law journal* 85, 85.

³²⁵ Andrews, above n 190, 49; see also Isabelle R Gunning, ‘Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries’ (1992) 23(2) *Columbia Human Rights Law Review* 189, 189.

³²⁶ See chapter III.

³²⁷ Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 1989(1) *University of Chicago Legal Forum* 139, 139.

address intersectionality to have a sufficient understanding of their experiences. Crenshaw rejected the use of feminist theories, which failed to take the interactions of race and gender into account. She pointed to a court case in which ‘black women’ could not argue for their right under the argument of discrimination because their issue cannot be argued without considering it a matter of race and gender-based discrimination at the same time.³²⁸

A law suit that Crenshaw reviewed was raised by Afro-American women against General Motors for not employing them and/or losing their jobs at General Motors. They were discriminated against on the basis of their gender and ethnicity. Their argument was rejected because they could not prove the discrimination. For instance, there were white women who were employed by General Motors. Gender was not an issue. Their claim about discrimination based on race was rejected also because General Motors previously employed ‘black men’. Crenshaw’s analysis of this case was based on her argument that the intersections of race and gender were not taken into account in understanding the discrimination these women suffered.³²⁹

Crenshaw’s intersectional approach influenced other research on intersectionality in the last two decades. However, it has been described as a theory applicable in different contexts.³³⁰ Not only is intersectionality used for the analysis of what ‘black women’ experienced in context, but also it was used for analysing experiences of other groups of women.³³¹

³²⁸ Ibid. I must point out that I do not agree with the use of the term ‘black women’; however, it is the term that was used by the author.

³²⁹ Ibid.

³³⁰ Knapp, above n 634, 249.

³³¹ Crenshaw, above n 327, 139.

Recently, other researchers have followed and expanded on Crenshaw's intersectional analysis.³³² They have included cases in which the traditional discrimination law did not provide a basis for protecting them from intersectional sources of discrimination.

According to McCall, there are three approaches to intersectionality: inter-categorical, intra-categorical and anti-categorical.³³³ The anti-categorical approach deconstructs the established categories of oppression and discrimination.³³⁴ The inter-categorical approach requires the researcher to employ already set up categories of oppression. McCall described the third approach, intra-categorical, as an approach that fits in the middle between the other approaches. The anti-categorical approach, which I use in this research, is derived from the 1980s' and 1990s' critique of modernism in the post-structuralist, deconstructive, postmodernist and postcolonial scholarly work.³³⁵ However, I only focus on it from a deconstructive perspective. As a methodological framework.

According to Anthias, intersectionality is used as a 'powerful metaphor' that would be misleading if it is understood in its literal meaning.³³⁶ She explains that intersectionality examines the sources of inequality as it happens in the space where intersecting sources of inequalities meet.³³⁷

³³² See Margaret Thornton, 'Can We Feminise Human Rights?' in Margaret Thornton (ed), *Sex Discrimination in Uncertain Times* (ANU Press, 2010) 319; see also Barbara Bagillhole, 'Applying the Lens of Intersectionality to UK Equal Opportunities and Diversity Policies' (2010) 27(3) *Canadian Journal of Administrative Sciences / Revue Canadienne des Sciences de l'Administration* 263, 263.

³³³ McCall, above n 75.

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ Anthias, above n 29, 158.

³³⁷ Ibid 158.

Choosing an anti-categorical approach is in line with Mohanty's argument of the need to understand the context in hand by deconstructing established hegemonic understandings, to explore the discontent that affects women in the context of their experiences.³³⁸ When I refer to hegemonic understanding in this thesis, I refer to the theoretical conceptualisation of female oppression, which includes race, gender, class and so on. Previous research on intersectionality was similar to Mohanty's in emphasising the importance of context dependency in doing research. For example, Anthias referred to her trans-locational analysis approach to analysing social structures, taking into consideration the 'broader social context' and 'temporality'.³³⁹

Feminists concerned with criminal law and legal discourse were not mainly interested in a traditional criminal law analysis of the elements of the crime.³⁴⁰ According to Nicolson, 'Gender stereotypes underlie the application and even the formulation of core criminal law concepts, such as *actus reus*, *mens rea* and the various defences to liability.'³⁴¹ Given this, Smart argued that it is difficult to discuss sexuality without referring to issues of 'marriage, love, the family and children'.³⁴² She further explained how the discussion of prostitution involves the ideas of cultural ideals of 'heterosexual love' and the 'sanctity' of family and marriage.³⁴³ For further evidence supporting this claim, Smart pointed to a statement given by a member of the House of Commons in 1979 on the Bill of reforming laws on soliciting.³⁴⁴ She pointed to two elements of the opposing statement by the member of the House of Commons. The first one is the claim that the limit of control over prostitution would impose a risk on the family. The second element of

³³⁸ Mohanty, above n 321, 51.

³³⁹ Anthias, above n 29, 130.

³⁴⁰ Donald Nicolson, 'Criminal Law and Feminism' in Donald Nicolson and Lois Bibbings (ed), *Feminist Perspectives on Criminal Law* (Cavendish Publishing Limited, 2000).

³⁴¹ Ibid.

³⁴² Carol Smart, *Law, Crime and Sexuality: Essays in Feminism* (Thousand Oaks, 1995), 55.

³⁴³ Ibid.

³⁴⁴ Ibid.

his statement was the feeling of pity towards the women who practise this labour, who could not understand the true meaning of life and could not experience its true pleasure.³⁴⁵

Smart, in her illustration of the sexed body analysis, argued that law is a powerful discourse, due to its consideration as an *oeuvre*, which represents a position as a matter of truth.³⁴⁶ Law supersedes other discourses. In her argument, the fact that law can stand as an *oeuvre*, which may claim that it represents truth, would make it in a powerful position that forms a dilemma that may silence both the women who seek the protection of law and the feminists who challenge the law.³⁴⁷ Knowing that the sexed body analysis is built on Foucault's analysis, Smart illustrated how Foucault did not include law in his discussions of knowledge.³⁴⁸ Foucault considered law to be a composition that predates science. Therefore, he excluded law from his analysis of power relations.³⁴⁹ Smart defended her use of legal discourse in the sexed body due to its powerful position that is similar to the power of science. The difference between powers of science and powers of law is that the former is powerful due to representing truth, while law's power derives from its methods, specific language, procedures, results and systematic proceedings that are similar to science in its strict rules.³⁵⁰

In exploring the sexed body, regarding power, gender and knowledge, Smart cited Smith's argument of how knowledge can be one-sided (from the male perspective).³⁵¹ The male view of knowledge is seen as universal and objective, and it is fed back to women as an objective source

³⁴⁵ Ibid.

³⁴⁶ Smart, above n 342, 70–83.

³⁴⁷ Ibid; see Ashton Bamfield, 'The Formative Power of Law in Rape Cases' (2010) 3(1) *Diffusion: UCLan Journal of Undergraduate Research* 1.

³⁴⁸ Ibid.

³⁴⁹ Ibid.

³⁵⁰ Ibid.

³⁵¹ Ibid 75–76; see Dorothy E Smith, 'Women's Perspective as a Radical Critique of Sociology' (1974) 44(1) *Sociological Inquiry* 7–13.

of knowledge. However, Smith's standpoint, which was cited by Smart as reflecting Marxist thought, argued that women-labourers who safeguard power held by men can understand and analyse patriarchy better if they experience discontent and oppression as members belonging to exploited classes. However, Smart favoured Foucault's analysis of power over Marxist analysis of power. Smart demonstrated this by saying that Foucault argued in his book *Power and Knowledge* that power may change over time. On the other hand, Smart explained that a Marxist analysis of power is built on the concept that economy is the source of power.³⁵² Within intersectional research, McWhorter argued for the importance of understanding the Foucauldian analysis of power to base his argument about intersections of sex and race as concepts that evolved a certain meaning within the 18th and 19th century.³⁵³

In the sexed body approach, Smart introduced the term 'phallogentric' as it was widely used by psychoanalysis feminists. She also defined it as the culture 'structured to meet the needs of the masculine imperative'.³⁵⁴ A phallogentric culture considers the role of providing insights into the genders' unconscious roles. In other words, it analyses women's unconscious gendered identity rather than the 'superficial system' imposed from the outside (from the male).³⁵⁵ Smart concluded that the law should be viewed as a phallogentric *oeuvre*, which contributes to the construction of meanings.

In a phallogentric or an androcentric culture, the legal discourses construct the identities of females for the needs of the male in a context of a man-made culture.³⁵⁶ Dorothy Smith

³⁵² Smart, above n 342, 70, 72; Michel Foucault and Colin Gordon, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (Harvester Press, 1980).

³⁵³ Ladelle McWhorter, 'Sex, Race, and Biopower: A Foucauldian Genealogy' (2004) 19(3) *Hypatia* 38, 38.

³⁵⁴ Smart, above n 175, 27.

³⁵⁵ Smart, above n 342, 70, 78.

³⁵⁶ See *Ibid* 78, 83.

illustrated how in a male centered culture, women are excluded in the formation of the cultural ideology.³⁵⁷ She further explains how texts, numbers and other screened information influences on forming societal norms. Smith wrote:

The relations of ruling in our kind of society are mediated by texts, by words, numbers, and images on paper, in computers, or on TV and movie screens. Texts are the primary medium (though not the substance) of power. The work of administration, of management, of government is a communicative work. Organizational and political processes are forms of action coordinated textually and getting done in words. It is an ideologically structured mode of action--images, vocabularies, concepts, an abstract terms of knowledge are integral to the practice of power, to getting things done.³⁵⁸

Smart emphasised the use of the phallus to refer to physical masculine identification, and the modification of laws and customs to meet the needs of the heterosexual man. The consequences of a phallogentric culture affect the laws and court trials. The phallogentric legal model would consider a woman's consent to specific intimate activities as an acceptance of all intimate sexual relationships.³⁵⁹ Smart examines several trial experiences in which the rape trial is disqualifying women and celebrating phallogentricism.³⁶⁰ Devorah explains how androcentrism describes the 'mechanisms of injustice' that forms and makes order of knowing and being from a masculine perspective to preserve the power and dominant discourse in favour of the male's advantage.³⁶¹ I understand from the perspective of a male centred ideology that phallogentricism and androcentrism are two sides of the same coin. To be more precise, I think that the former focuses on the hetero-male's sexual needs and how this influences his policy and ideology formation,

³⁵⁷ Dorothy E Smith, *The everyday World as Problematic: A Feminist Sociology* (Northeastern University Press, 1987) 17.

³⁵⁸ Ibid 17.

³⁵⁹ Smart, Above n 175, 34–6.

³⁶⁰ Ibid 35.

³⁶¹ Rachel Devorah, 'Ocularcentrism, Androcentrism' (2017) 23(3) *Parallax* 305, 305.

whereas the latter does not only focus on sexual needs but also the power of the male. I prefer to use the term androcentrism because it includes man's phallogentric needs in addition to his social needs of maintaining his powerful position in the society. In other words, I consider the use of androcentrism in the analysis as more general than phallogentricism.

Androcentrism is intertwined with the discussion of honour in Arab culture. Because I think that a man's control of his kin female, or his wife to protect his and her honour, is due to his culturally constructed assumption that protecting his women's chastity contributes to maintaining his power position and prestige. This is why a male ideology forms the understanding that the honour of female needs to be protected.

Critical Discourse Analysis, is also used in this thesis as a methodological tool. I have explained in Chapter 1, how I use the tools of CDA in the analysis. I review it in this literature chapter before I start with the analysis of the data in the coming chapters.

According to Jørgensen and Phillips, CDA 'provides theories and methods for the empirical study of the relations between discourse and social and cultural developments in different social domains'.³⁶² In this thesis, I present findings which are sourced from social, cultural and discourse arenas. This approach, introduced by Fairclough in the 1980s, draws on the method of analysing the cultural and social practices in written and spoken texts, and the power relations that contribute to these.³⁶³ In his demonstration of CDA, Fairclough combined the analysis of text, the process of text production and the 'sociocultural analysis events as a whole'.³⁶⁴ Scollon refers to CDA as the 'programme of social analysis that critically analyses discourse – that is to

³⁶² Marianne Jørgensen and Louise Phillips, *Discourse Analysis as Theory and Method* (Sage Publications, 2002).

³⁶³ Norman Fairclough, above n 171.

³⁶⁴ *Ibid.*

say language in use – as means of addressing’ social dilemmas as being constituted in discourse.³⁶⁵

Jørgensen and Phillips explain how social practices are in a dialectical relationship as they influence each other and result in shaping and reshaping ‘social structures’.³⁶⁶ This is an important feature of CDA. In addition, CDA relies on the analysis of language within the context being studied. Jørgensen and Phillips explain that the language is analysed in light of the social interactions.³⁶⁷

According to CDA, discourse functions via discursive practices in constructing uneven power relationships. This uneven relationship empowers and silences one category of persons over other categories.³⁶⁸ That is, discourse functions ideologically.³⁶⁹ For Fairclough, ideology does not represent truth; it represents ideology (itself).

B *Summary*

The main conclusion of this chapter concerns the importance of understanding the contextual circumstances for doing research. Together with deconstruction, discourse and intersectional feminist research, I am going to use intersectionality as a guiding theory to apply it to the context of Jordan. Nonetheless, I will use the anti-categorical approach in analysing the contextual findings in the findings chapters. In the anti-categorical approach, I will do two tasks concluded

³⁶⁵ Ron Scollon, ‘Towards an Integrated Understanding of the Place of Text in Social (Inter)Action: Mediated Discourse Analysis and the Problem of Social Action’ in Ruth Wodak and Michael Meyer (eds), *Methods of Critical Discourse Analysis* (Sage Publications, 2001) 139, 140.

³⁶⁶ Ibid.

³⁶⁷ Ibid 62.

³⁶⁸ See Fairclough, above n 171, 46–8.

³⁶⁹ Jørgensen and Phillips, above n 362, 63.

from Mohanty's demonstration of how to discuss third world feminism.³⁷⁰ The first task is to deconstruct the understanding of sex trafficking, sex work and women's oppression as already set up categories of oppression. Secondly, I will reconstruct the understanding of sex trafficking, sex work and women's oppression in light of the contextual discourse on sex trafficking and sex work, and Jordanian criminal and social justice approaches.

Advocating for a particular feminist position should be considered carefully when justifying whether a regime is appropriate for Jordan's legal system or not. As I understand from the literature, the uniqueness of the Middle Eastern culture and the effect of the global trafficking crisis on the Middle East reveals the need to take the social and cultural norms into consideration when answering the research question.

This chapter sets up the theoretical and methodological approach of adopting an anti-categorical intersectionality approach. This is used mainly in the analysis of Chapter VI and in the discussion in Chapter VIII.

³⁷⁰ Talpade Mohanty, above n 321, 51.

IV HUMAN RIGHTS ARE WOMEN’S RIGHTS: SEX TRAFFICKING VICTIMS AND SEX WORKERS

Introduction

Jordan has ratified the *Trafficking Protocol* (2000), the *Convention on the Elimination of of Forms of Discrimination Against Women* (1979) (CEDAW) the UN *International Covenant on Civil and Political Rights* (1966) (ICCPR), the *International Covenant on Economic Social and Cultural Rights* (1966) and the UN *Convention on the Rights of the Child* (1989).³⁷¹ As international law is a powerful tool to suppress human trafficking,³⁷² reviewing Jordan’s obligations under the Trafficking Protocol and the CEDAW provides a preview of the level of compliance in protecting the rights of sex trafficked victims and sex workers, in light of the findings of this study. Human rights law and its instruments of enforcement are vital for guaranteeing a national response to trafficking and in ensuring that human rights are not violated in circumstances of trafficking.³⁷³ Not only did I review the human rights framework on trafficking crimes and the rights of women, but I also reviewed the literature on feminist studies regarding trafficking, sex work, gender-based violence and women’s rights. Sheila Jeffreys explains how governments view trafficking as a form of organised crime, whereas feminist scholars consider trafficking as a form of oppression and violence against women.³⁷⁴ However,

³⁷¹ *United Nations Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981); *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes*, opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

³⁷² Lindsey King, ‘International Law and Human Trafficking’ (2008) Topical Research Digest: International Law and Human Trafficking, Josef Korbel School of International Studies, University of Denver 88.

³⁷³ Gallagher, above n, 177.

³⁷⁴ Jeffreys, above n 10.

feminist approaches to sex trafficking and sex work are considered a human rights approach to trafficking of women.³⁷⁵

I have depended on Anne Gallagher's book *International Law of Human Trafficking* in this chapter as it provides a comprehensive overview of the study of the rights of female sex trafficking victims. I describe the language as affirming the obligations of the States Parties to the related conventions.

There are various approaches to understanding the problem of sex trafficking of women. Uçarer, as cited by Marinova and James, demonstrated various approaches to tackling trafficking of women, including migration and human rights approaches.³⁷⁶ Strandberg and Wennerholm explain how the state and/or NGOs provide remedies for sex trafficking of women; that is how they conceptualise the problem of trafficking of women. The state or the NGO may either regard it as a problem of moral, public order, labour, migration or a human rights concern.³⁷⁷ The migration approach regards trafficking as a matter for each sovereign state. Where the state regards the illegal immigration into their country as problematic, requiring repatriation, it will impose strict border control or state monitoring of mixed marriages.³⁷⁸

The human rights approach to the trafficking of women for sex includes two feminist lines of thoughts.³⁷⁹ The first line considers sex work/prostitution as sexual exploitation and violence

³⁷⁵ Emek Uçarer, 'Trafficking in Women: Alternate Migration or Modern Slave Trade?' in Mary M. Meyer and Elizabeth Prugl (eds), *Gender Politics in Global Governance* 230, 230-231.

³⁷⁶ Nadejda K Marinova and Patrick James, 'The Tragedy of Human Trafficking: Competing Theories and European Evidence' (2012) 8 *Foreign Policy Analysis* 231, 233; Uçarer, above n 375, 230-231.

³⁷⁷ Nina Strandberg and Carolina J Wennerholm, *Crossing Borders Against Trafficking in Women and Girls in the Baltic Sea Region: A resource Book for Working against Trafficking in the Baltic Region* (Foundation of Women's Forum, Sweden, 2ed, 1999).

³⁷⁸ Ibid; Marinova and James, above n 376, 233; Uçarer, above n 375, 230.

³⁷⁹ Strandberg and Wennerholm, above n 377; Marinova and James, above n 376, 233; Uçarer, above n 375, 230.

against women. This view considers the need for abolishing trafficking, which includes consensual sex work or prostitution.³⁸⁰ The other feminist approach to the trafficking of women for sex does not consider sex work as trafficking unless there was an element of coercion or deception.³⁸¹ This latter approach considers the need to regard sex work as a matter of freedom if the woman expresses her agency in practising sex work.³⁸² I explain these views later in Chapter III. The discussion of these two feminist positions do not conflict the adoption of a human rights framework in this thesis.

The human rights framework allows the discussion of feminist thought, which influenced the drafting of treaties related to the rights of trafficked women;³⁸³ and also influenced the criminal justice approaches to trafficking of women.³⁸⁴ The following umbrella shows a map of my literature review chapters, and is relevant to the findings and discussion. It starts with the human rights framework, followed by a review of different feminist and criminal justice practices that are relevant to the governance of trafficking crimes and the rights of trafficked women. The umbrella also includes my theoretical framework of intersectionality, which directs my feminist critique of Jordan's position on sex trafficking.

³⁸⁰ Janet Halley, Prabha Kotiswaran, Hila Shamir, Chantal Thomas, 'From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism (2006) 29 *Harvard Journal of Law and Gender* 334.

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ *Ibid* 358.

³⁸⁴ See *Ibid* 348.

I have used an umbrella to illustrate the broadness of human rights and its inclusion in a feminist discussion of trafficking of women for sex, sex work and violence against those women as explained by the authors mentioned above.³⁸⁵

Figure 3.1 The Umbrella of Human Rights

Figure 3-1 links the human rights framework as a primary source of legal reasoning to the discussion of previous Chapter II on context-dependent research by doing intersectional research. It also links the human rights research on sex trafficking and sex work exploitation to Chapter IV's feminist discussion of the practices of criminal justice towards sex trafficking and sex work.

The global campaign and the feminist legal movement are ideologies and policies structured for promoting women's rights. According to Andrews, both have been actively contributing to securing the rights of women and gender equality.³⁸⁶ The following literature covers the legal obligations of governments to protect women, specifically sex trafficked women who were rescued or were still trafficked, in addition to the rights of sex workers who might be exploited.

In Chapter IV, I review feminist insights and the various criminal justice approaches to women's dilemmas in the sex work environment.

³⁸⁵ See Marinova and James, above n 376, 233; Uçarer, above n 375, 230; Strandberg and Wennerholm, above n 377.

³⁸⁶ Andrews, above n 190, 36.

Quotations such as ‘women’s rights are human rights’ and ‘Sex workers’ rights are human rights’ are the cornerstone of my analysis.³⁸⁷ I review various human rights treaties and the *Trafficking Protocol* (2000), which is a law enforcement treaty.³⁸⁸

Two movements structured the global campaign (international law framework) for human rights. The first movement produced covenants, conferences, and agreements following the establishment of the United Nations Charter.³⁸⁹ The second movement of the global campaign comprised non-governmental organisations (NGOs) that aimed to fulfil the goals of the United Nations in promoting human rights, including civil and political rights, and social and economic rights.³⁹⁰

Regarding discourse on women’s human rights, McBeth et al pointed to two terms used to refer to the IHRL women-framework: women’s rights and human rights of women.³⁹¹ McBeth et al reported that there was uncertainty between the aim of achieving equality for women and the human rights framework.³⁹² It was debatable as to whether approaching the rights of women from a human rights perspective should come as an unseparated group of rights from mainstream human rights law or whether it is a group of rights granted for a group with special needs. The former approach was criticised as it did not consider the fact that women’s rights differ from

³⁸⁷ See Catherine Murphy, *Sex Workers’ Rights Are Human Rights* (2015) Amnesty International <<https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/>>; United Nations, ‘Women’s Rights Are Human Rights’ (Paper presented at New York; Geneva, <<http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>).

³⁸⁸ see Elizabeth M. Bruch, ‘Models Wanted: The Search for an Effective Response to Human Trafficking’ (2004) 40 *Stanford Journal of International Law* 1.

³⁸⁹ Andrews, above n 190.

³⁹⁰ Ibid.

³⁹¹ Adam McBeth, Justine Nolan and Simon Rice, *The International Law of Human Rights* (Oxford University Press, 2011).

³⁹² Ibid.

those of men; whereas, the second approach was reproached for claiming women have special needs, which strengthens the difference between men and women.³⁹³

A paper published by the UN entitled ‘Women’s Rights are Human Rights’ suggested the need to develop suitable policies for eliminating sex discrimination against women to attain equality. The paper suggests that women should be treated like any other group of persons requiring their human rights to be achieved equally with others. The paper considers the need to have a comprehensive understanding of how women encounter discrimination.³⁹⁴ The UN paper reported the statement of the Committee on the Elimination of Racial Discrimination, which suggests the need to take into account ‘gender factors or issues’ and their possible connection with cultural, social and traditional practices that stereotype females.³⁹⁵

In the following, I present the discussion of the human rights of the sex trafficked victims and sex workers under the human rights treaties most of which the Jordanian government ratified. The following sections review the criminalisation, prevention and protection approaches to sex trafficking.

³⁹³ Debra L DeLaet, *The Global Struggle for Human Rights: Universal Principles in World Politics* (Thompson Wadsworth, 2006).

³⁹⁴ United Nations, ‘Women’s Rights Are Human Rights’ (Paper presented at New York; Geneva, <<http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>.

³⁹⁵ United Nations, ‘Women’s Rights Are Human Rights’ (Paper presented at New York; Geneva) 7-8 <<http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>.

A *Human Rights Law treaties on the rights of women and sex trafficked victims and the obligation to protect*

Scholars have referred to the discussion of the rights of trafficked women and girls in several treaty instruments. International treaties include the Bill of Human Rights,³⁹⁶ the *Convention on the Elimination of all forms of Discrimination Against Women* (1979) and the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*.³⁹⁷ There are also two international documents that provide insight and guidelines on how countries should treat trafficked persons:³⁹⁸ the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (also known as the Trafficking Principles and Guidelines),³⁹⁹ and the *Human Rights Standards for the Treatment of Trafficked Persons*.⁴⁰⁰

In this section, I discuss the Human Rights treaties and the obligations on Jordan to protect sex trafficked victims and exploited sex workers. First I review the literature on the Trafficking Protocol (2000) then I review other women's rights (human rights) treaties.

Knowing that the *Trafficking Protocol* (2000) is the only trafficking treaty that defines human trafficking, it is crucial to demonstrate the elements of the crime of trafficking, knowing that it

³⁹⁶ The Bill of human rights includes the International Declaration of Human Rights, The International Covenant for Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights; International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); and *International Covenant on Civil and Political Rights*, opened for signature, 999 UNTS 171 (entered into force 23 March 1976); and *Universal Declaration on Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

³⁹⁷ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes, Date Opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

³⁹⁸ King, above n 372, 88.

³⁹⁹ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002).

⁴⁰⁰ *Human Rights Standards for the Treatment of Trafficked Persons* (Global Alliance Against Traffic in Women; Foundation Against Trafficking in Women; International Human Rights Law Group, 1999).

influenced the legal reform in Jordan on trafficking. The Trafficking Protocol defines human trafficking in Article 3 as:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs⁴⁰¹

The Trafficking Protocol criminalises the committing of the above crimes and the attempt to commit the crime of trafficking.⁴⁰² According to the annotated guide to the Complete UN Trafficking Protocol, it is not advised that States Parties to the Protocol adopt the Trafficking Protocol definition as it has too many elements.⁴⁰³ Ann Jordan, the author of the annotated guide, explains that States Parties must understand the definition, and then incorporate a simple definition of human trafficking to avoid vagueness, which might favour a defendant.⁴⁰⁴

The three elements of the trafficking crime are the *actus reus*, the action element, the means element, and the *mens rea* (mental element). The three elements must be present for the crime to be found; however, when the victim is a child, the means element is not required.⁴⁰⁵ The elements of the crime of trafficking of persons that are discussed in this section are deemed

⁴⁰¹ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes, Date Opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003) art 3.

⁴⁰² Tripti Tandon, Gabriel Armas-Cardona and Anand Grover, 'Sex Work and Trafficking: Can Human Rights Lead Us out of the Impasse?' (2014) *Health and Human Rights Journal*.

⁴⁰³ Ann D. Jordan, 'Annotated Guide to the Complete UN Trafficking Protocol' (A tool to assist advocates in the development of a human rights framework for national anti-trafficking laws and policies, Global Right – Partners for Justice; Human Right Law Group, May 2002).

⁴⁰⁴ *Ibid.*

⁴⁰⁵ Ramona Vijayarasa, *Sex, Slavery and the Trafficked Woman Myths and Misconceptions about Trafficking and its Victim* (Ashgate Publishing Limited, 2015), 7–8.

important for the analysis of the Jordanian Human Trafficking Legislation (2009) in Chapter VIII, knowing that it was passed after ratifying the *Trafficking Protocol* (2000).

The *actus reus* are the actions that can be completed by different activities such as the ‘recruitment, transportation, transfer, harbouring or receipt of persons’.⁴⁰⁶ These broad activities that constitute the action element may potentially lead to bringing different perpetrators to justice including the recruiters, brokers, business owners and managers, supervisors, and households.⁴⁰⁷

The means element includes the means of threat, force, coercion, abduction, fraud, deception, an abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person controlled by another person.⁴⁰⁸ This element is required if the victim is an adult.⁴⁰⁹ Consent is irrelevant if proven that the means element has been fulfilled.⁴¹⁰ Shamir demonstrated that the means element in the Protocol is vague. She further explains that the passiveness in defining coercion, force, or abuse of power may result in the inability to accurately measure the level of coercion or abuse of power to complete the definition of the crime.⁴¹¹

⁴⁰⁶ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes, Date Opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003) art 3(a).

⁴⁰⁷ Gallagher, above n 177, 30.

⁴⁰⁸ Ibid.

⁴⁰⁹ United Nations Office on Drugs and Crime, *The Role of ‘Consent’ in the Trafficking in Persons Protocol* (UNODC, Vienna, 2014); United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes, Date Opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003) art 3(b).

⁴¹⁰ United Nations Office on Drugs and Crime, *The Role of ‘Consent’ in the Trafficking in Persons Protocol* (UNODC, Vienna, 2014) 80, 7–8.

⁴¹¹ Hila Shamir, ‘A Labour Paradigm for Human Trafficking’ (2012) 60 *ULCA Law Review*; University of California 76.

The means can be direct and less direct. Coercion is a direct means of trafficking, in addition to being central to trafficking and is an important aspect that differentiates people trafficking from people smuggling.⁴¹² The act of coercion is linked to other means such as the use of force and threat to signify the less direct means.⁴¹³ Gallagher suggested that the less direct means are scenarios in which the victim is maintained in exploitative situations.⁴¹⁴ The less direct means include fraud and deception.⁴¹⁵ It includes the scenarios of promising the person to work in a certain job or certain working conditions then to be deceived by the kind of profession or the conditions.⁴¹⁶

Regarding the means of ‘abuse of power or a position of vulnerability’, the term ‘abuse of power’ has not been defined within the Trafficking Protocol.⁴¹⁷ However, the abuse ‘of position of vulnerability’ was defined in the Travaux Préparatoire as ‘any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.’⁴¹⁸

According to Halley et al, this sentence was constructed according to abolitionist\ structuralist feminists’ insights by taking the female’s private circumstances and her personal situation into consideration, knowing that it might have a coercive influence on the woman’s consent to practice sex work.⁴¹⁹ However, the term ‘abuse of authority’, which is an earlier term that was

⁴¹² Gallagher, above n 177.

⁴¹³ Ibid.

⁴¹⁴ Ibid.

⁴¹⁵ Ibid

⁴¹⁶ United Nations Office on Drugs and Crime, *The Role of ‘Consent’ in the Trafficking in Persons Protocol* (UNODC, Vienna, 2014) 12.

⁴¹⁷ Interpretative Notes for the Official Record of the Negotiation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, Travaux Préparatoire, UN Doc A/55/383/Add.1 (3 November 2000) para 63.

⁴¹⁸ Interpretative Notes for the Official Record of the Negotiation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, Travaux Préparatoire, UN Doc A/55/383/Add.1 (3 November 2000) para 63.

⁴¹⁹ Halley et al, above n 380, 335.

debated during the early drafting of the protocol, included the male member in a family's use of power over female family members.

Vijayarasa explained that the Trafficking protocol failed to identify the means of 'abuse of power or of a position of vulnerability'.⁴²⁰ At an international level, the focus on indicators of the abuse of power or of the position of vulnerability was mainly on the individual's unstable 'financial, psychological and social situation'.⁴²¹ The UN Office on Drugs and Crime (UNODC) drafted a Model Trafficking Law suggesting that national laws should adopt a definition, to 'better protect the victim', by focusing on the intention of the perpetrator to take advantage of the victim's circumstances.⁴²²

The means 'of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person' is vague.⁴²³ Gallagher explained how it is unclear whether they only refer to legal control or whether they also refer to *de facto* control. The legal control may include the control of a parent over their child, whereas the *de facto* control may include the control of an employer over an employee as an example.⁴²⁴ Gallagher questioned whether there is a difference between the 'control over another person' and the 'abuse of power or position of vulnerability of a person'.⁴²⁵

⁴²⁰ Vijayarasa, above n 405.

⁴²¹ Gallagher, above n 177.

⁴²² United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons* (UNODC, 2009) 9-10.

⁴²³ Gallagher, above n 177.

⁴²⁴ *Ibid* 33.

⁴²⁵ *Ibid* 33.

The *mens rea*, also known as the purpose element, is stated in the definition ‘for the purpose of exploitation’.⁴²⁶ According to Shamir, the Trafficking Protocol does define exploitation.⁴²⁷ However, the definition of trafficking included a list of minimum exploitative practices that are open-ended, which includes ‘the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.⁴²⁸ The UNODC anti-trafficking manual for criminal justice practitioners includes the note that the intention in the element refers to the special intention, *dolus specialis*, which is defined by the UNODC manual as the purpose of the perpetrator while he/she is committing the material elements of the crime.⁴²⁹

The terms ‘exploitation of the prostitution of others’ and ‘other forms of prostitution’ have been deliberately left undefined so each State Party would address prostitution in their internal laws.⁴³⁰ The UNODC law model has provided a paradigm of the definition of the term ‘exploitation of prostitution of others’ as ‘the unlawful obtaining of financial or other material benefit from the prostitution of another person.’⁴³¹

Regarding the consent of the trafficked person, several scholars have visited this issue in light of the Trafficking Protocol’s definition of trafficking. As explained above, the consent of the trafficked victim is irrelevant if a means element has been met. However, Obokata explains how

⁴²⁶ Shamir, above n 411; United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes, Date Opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

⁴²⁷ Ibid; United Nations Office on Drugs and Crime, *The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol* (UNODC, 2015) 5.

⁴²⁸ Gallagher, above n 177, 34–5.

⁴²⁹ Ibid 38; see United Nations Office on Drugs and Crime, *Anti-human trafficking manual for criminal justice practitioners: module 1* (UNODC, 2009).

⁴³⁰ United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons* (UNODC, 2009) 13.

⁴³¹ United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons* (UNODC, 2009) 13.

the consent of the victim to trafficking may raise dilemmas as they might be classified as collaborators to the crime of trafficking as they gave consent.⁴³²

The Trafficking Protocol's definition of prostitution was neutral in the debate between the two feminist positions that supported either abolishing or regulating sex work. The definition only includes victims of prostitution in which the means element of trafficking was met. Doezema explains that the Trafficking Protocol includes a footnote confirming that States Parties should not interpret paragraph (b) of Article 3 as meaning they should amend their laws and make prostitution illegal.⁴³³

The definition of the trafficking protocol is broad. As recommended in the UNODC, model governments do not adopt a definition that is similar to the Trafficking Protocol, but they adopt language that is less complicated than that of the Trafficking Protocol.⁴³⁴ Bruch argued that having a holistic approach to defining trafficking, which points to the rights requiring protection, would assist in identifying victims who need assistance.⁴³⁵

From a women's treaty perspective, McBeth et al presented the analysis of women's rights treaties according to their goal as either a protective, a corrective or a non-discriminatory approach.⁴³⁶ Hevener explained that each of these categories has a different conception of the desirable and just status for women in society.⁴³⁷ A protective treaty is based on the exclusionary

⁴³² Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Martinus Nijhoff, 2006), 25.

⁴³³ Jo Doezema, 'Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiations' (2005) 14(1) *Social & Legal Studies*; SAGE Publications 61.

⁴³⁴ United Nations Office on Drugs and Crime, *Anti-human trafficking manual for criminal justice practitioners: module 1* (UNODC, 2009) 2.

⁴³⁵ Bruch, above n 388, 1.

⁴³⁶ Adam McBeth et al, above n 391; see also Natalie Kaufman Hevener, 'An Analysis of Gender Based Treaty Law: Contemporary Developments in Historical Perspective' (1986) 8(1) *Human Rights Quarterly* 70.

⁴³⁷ Hevener, above n 436, 70.

approach, which considers women as a group incapable of engaging in particular actions. On the other hand, a corrective treaty guides an inclusionary approach to women treating women as a group requiring help to challenge ‘oppressive or restrictive conduct’. The non-discriminatory treaty, which declares that women are equal to men, is gender-neutral.⁴³⁸ I include the discussion of these three analytic categories of women’s treaties, since I explore cases of sex work and sex trafficking within criminal justice approaches that restrict, legalise or regulate women’s choice to practice sex work.

The analytic categories may contribute to understandings of the ultimate goal of the treaty, as each of the three analytic categories assumes and visualises women differently.⁴³⁹ According to Hevener, the protective provisions refer to a woman via her domestic role, even if she moves forward to engage in the public sphere. This treaty approach treats women as subordinate when they are located outside the domestic sphere.⁴⁴⁰ The protective law considers women as in need of the ‘paternal power of the state’ to protect her from activities that she is assumed incapable of doing and restricting her involvement in the activities.

In 1979, the general assembly of the UN adopted the *Convention on the Elimination of all forms of Discrimination Against Women* (CEDAW). The Convention placed obligations on States Parties to eliminate discrimination based on sex. The CEDAW treaty is considered a non-discriminatory treaty.⁴⁴¹ CEDAW signified a significant advance in the international recognition of women’s ultimate equality with men.⁴⁴² However, it also contains articles that are

⁴³⁸ McBeth et al, above n 391.

⁴³⁹ Ibid.

⁴⁴⁰ Hevener, above n 436, 70.

⁴⁴¹ Ibid 79; Mmatsie Mooki et al, ‘Women’s Rights in International Law’ in Azizur Rahman Chowdhury and MD Jahid Hossain Bhuiyan, *An Introduction to International Human Rights Law* (Brill, Leiden; Boston, 2010) 73, 77.

⁴⁴² See Mmatsie Mooki et al, above n 441, 73.

corrective.⁴⁴³ CEDAW calls upon States Parties to achieve the de facto equality for women, in addition to abolishing cultural, social and traditional practices that hinder women from gaining equality.⁴⁴⁴ CEDAW's provisions were developed as a response to the failure of the *International Covenant for Civil and Political Rights* (ICCPR) and the *International Covenant for Economic Social and Cultural Rights* (ICSECR) to relate to the rights of women in the private (domestic) sphere.⁴⁴⁵ Since Jordan has ratified the CEDAW, I have addressed the level of compliance to the CEDAW regarding the protection of sex trafficked females and sex workers as women.

In their review, McBeth et al cite the General Recommendation of the CEDAW Committee, which put forward the clear distinction between sex and gender.⁴⁴⁶ The CEDAW Committee confirmed that CEDAW covers gender-based discrimination. The recommendation stipulates that:

The term sex refers to biological differences between men and women. The term gender refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of powers and rights favouring men and disadvantaging women.⁴⁴⁷

⁴⁴³ McBeth et al, above n 391.

⁴⁴⁴ United Nations, 'Women's Rights Are Human Rights' (Paper presented at New York; Geneva, <<http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>; Mmatsie Mooki et al, above n 441, 77; Hilary Charlesworth, 'What are "Women's International Human Rights"??', in Rebecca J Cook, *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, 1994) 58, 63.

⁴⁴⁵ McBeth et al, above n 391, 543.

⁴⁴⁶ Ibid.

⁴⁴⁷ Ibid 541; General Recommendation No.28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010) CEDAW/C/2010/47/GC.2.

This recommendation demonstrates the role of CEDAW in pointing to the contextual social construction of gendered roles, which may result in discrimination against women.

However, CEDAW's approach to women's rights was described as 'endocentric'.⁴⁴⁸ For instance, it refers to the rights of women with phrases such as 'equal rights with men', 'same rights as men' and 'equal terms with men'.⁴⁴⁹ CEDAW's approach, which is aligned with liberal feminism, was criticised by both cultural and radical feminists on the basis that it risks making women's rights reliant on men's rights as a measure instead of promoting 'true universality of human rights'.⁴⁵⁰ However, McBeth et al considered CEDAW to have reflected the 'unfolding feminist critique', being a document that was influenced by liberal thought.⁴⁵¹ CEDAW is unique, going beyond the traditional international treaty style and putting forward liability on the States regarding the private sphere actors. However, that was one of the reasons for the many countries' reservations upon ratifying CEDAW.⁴⁵²

Article 2 of CEDAW requires states to 'pursue by all appropriate means' and strategies to abolish discrimination against women. Hevener explained how CEDAW gives explicit reference to amending legislation and constitutional laws to provide women with legal protection via judicial remedies.⁴⁵³ Article 2 of the CEDAW obligates states to take by appropriate means a policy to eliminate discriminations against women. Which includes the provision in paragraphs (b), (f) and (g):

⁴⁴⁸ McBeth et al, above n 391, 542.

⁴⁴⁹ Ibid 542.

⁴⁵⁰ Ibid 542.

⁴⁵¹ Ibid 543.

⁴⁵² Ibid; see also United Nations, 'Women's Rights Are Human Rights' (Paper presented at New York; Geneva, <<http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>).

⁴⁵³ Hevener, above n 436, 79.

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.⁴⁵⁴

CEDAW attempts to balance the justification of providing different treatment that is more appropriate for women as a standard for ‘promoting genuine equality of opportunity’ and the rights of women as human rights.⁴⁵⁵ Delaet pointed out that CEDAW’s approach to balancing the two approaches to women’s rights is distinct from considering the rights of women as ‘special needs’.⁴⁵⁶ The CEDAW states in article 4(1):

Adoption by State Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards⁴⁵⁷

Regarding child marriage, CEDAW’s approach to child marriages in Article 16(2) was in non-discriminatory language.⁴⁵⁸ Article 16(2) stated that:

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.⁴⁵⁹

⁴⁵⁴ *United Nations Convention on the Elimination of all forms of Discrimination against Women*, Date Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 2.

⁴⁵⁵ DeLaet, above n 393.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ *United Nations Convention on the Elimination of all forms of Discrimination against Women*, Date Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

⁴⁵⁸ Hevener, above n 436, 80.

⁴⁵⁹ *United Nations Convention on the Elimination of all forms of Discrimination against Women*, Date Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

Paragraph 18 of the General Recommendation No. 28 of the CEDAW Committee recognised that:

Intersectionality is a basic concept for understanding the scope of the general obligations of State Parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States Parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures⁴⁶⁰

I have already discussed intersectionality as an approach to theorising discrimination and the oppression of women in Chapters I and II. One of the important discussions of intersectionality in Chapter VI is whether the studied context, in this thesis, has traces occurring of intersectional discrimination, in addition to Chapter VIII's discussion of how paragraph 18 of recommendation No.28 of the CEDAW Committee should be adopted in the Jordanian law and policy.

The CEDAW Committee conceptualised discrimination that includes indirect discrimination in addition to direct discrimination.⁴⁶¹ Indirect discrimination occurs when:

A law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognise structural and historical patterns of discrimination and unequal power relationships between women and men.⁴⁶²

⁴⁶⁰ General Recommendation No.28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010) CEDAW/C/2010/47/GC.2 para 18.

⁴⁶¹ See McBeth et al, above n 391, 539; Margaret L. Satterwaite, 'Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers' (2014) 8(1) *Yale Human Rights and Development Journal* 1.

⁴⁶² General Recommendation No.28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010) CEDAW/C/2010/47/GC.2 para 16.

CEDAW has had a beneficial influence on the rights of women in countries that are party to the Convention. It influenced the legislative and constitutional reform in several countries to include the CEDAW's provisions on the rights of women in the respective states' jurisdictions. McBeth et al cited Freeman's referral to the power of the CEDAW as a tool for promoting the rights of women by those who refer to this document.⁴⁶³

Regarding trafficking of women, Article 6 of CEDAW obligates the States Parties to take appropriate measures to suppress the trafficking of women and the exploitation of women via prostitution. Article 6 states that:

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.⁴⁶⁴

According to Vijayarasa, CEDAW is the only treaty that is concerned with trafficking and is gender specific at the same time.⁴⁶⁵ Mcbeth et al explained that Article 6 stipulates the social domination of men over women regarding specific activities that are related to trafficking, prostitution and exploitation of women.⁴⁶⁶ This article is considered as a corrective article, referred to in the earlier *Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others* (1949).⁴⁶⁷ However, it does not recommend specific 'corrective measures'.⁴⁶⁸ Nonetheless, Gallagher explained that Article 6 of the CEDAW obligates States Parties to the Convention to suppress trafficking of women, but it did not provide detailed measures for States. Hevener revealed that the inclusion of specific topics in the

⁴⁶³ McBeth et al, above n 391.

⁴⁶⁴ *United Nations Convention on the Elimination of Discrimination against Women*, Date Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 6.

⁴⁶⁵ Vijayarasa, above n 405.

⁴⁶⁶ McBeth et al, above n 391, 539.

⁴⁶⁷ Hevener, above n 436, 70.

⁴⁶⁸ Ibid 74; Heli Askola, *Trafficking in women and Prostitution in the Baltic States: Social and Legal Aspects* (International Organization for Migration, 2002).

CEDAW, including trafficking of women in article 6, was intended to raise these issues as dilemmas that continue to exist rather than making the previous trafficking conventions obsolete.⁴⁶⁹

It can be argued that trafficking is a form of discrimination against women and gender-based violence.⁴⁷⁰ Gender-based violence is defined in the General Recommendation No. 19 of the CEDAW Committee as a ‘form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on the basis of equality with men’.⁴⁷¹ The stipulated actions mentioned in the General Recommendation, which constitute gender-based violence, include the actions causing ‘mental, physical and sexual harm or suffering, threats of such acts, coercion and other deprivation of liberty.’⁴⁷²

The human trafficking treaties had three approaches to treating human trafficking. The approaches are referred to by Bruch as the law enforcement approach, the labourers’ rights approach and the human rights approach.⁴⁷³ *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime* (2000), also known as the *Trafficking*

⁴⁶⁹ Hevener, above n 436, 75.

⁴⁷⁰ Gallagher, above n 177, 191–7.

⁴⁷¹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19 on Gender Based Violence against Women* (1992) UN Doc. CEDAW/C/1992/11/GC.

⁴⁷² Ibid.

⁴⁷³ Bruch, above n 388, 1.

Protocol (2000), is a law enforcement approach treaty.⁴⁷⁴ The law enforcement approach and the *Trafficking Protocol* (2000) require States Parties to suppress and punish trafficking.

The trafficking protocol is different from the previous trafficking treaties as it is included as a protocol to the UN Convention against Transnational Organised Crimes.⁴⁷⁵ The *Trafficking Protocol* obligates States Parties to Criminalise conduct that constitutes trafficking in Persons. Seaman explains that it gave priority to the prosecution of traffickers over the protection and assistance to the victims of trafficking.⁴⁷⁶ Moreover, Shoaps demonstrated the protocols' favouring of combating organised crime instead of combating the violations of human rights.⁴⁷⁷

However, it does not obligate States Parties to criminalise prostitution (prohibition approach to prostitution). According to Obokata, the drafters of the treaty believed that the prohibition approach would drive prostitution to become an underground trade; also, it would only result in punishing and prosecuting the prostitute, though prohibition results in punishing both the prostitute and the client.⁴⁷⁸ The treaty was also criticised for disregarding other forms of trafficking; *inter alia*, sex tourism, and sexual exploitation such as forced marriage.⁴⁷⁹ The negotiations on defining trafficking crimes involved controversies as to whether consensual prostitution should be included in the definition of human trafficking.⁴⁸⁰

Obligations to States Parties for Sex Trafficked Females, given the Human Rights Treaties

⁴⁷⁴ Abram L. Seaman, 'Permanent Residency for Human Trafficking Victims in Europe: The Potential Use of Article 3 of the European Convention as a Means of Protection. (Dorsey & Whitney Studen Writing Prize in Comparative and International Law: Outstanding Note Award Winner)' (2010) 48(2) *Columbia Journal of Transnational Law* 287, 294; Bruch, above n 388, 1.

⁴⁷⁵ Seaman, above n 474, 287.

⁴⁷⁶ *Ibid* 294.

⁴⁷⁷ Laura L Shoaps, Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act (2013) 17(3) *Lewis and Clark Law Review* 931, 933.

⁴⁷⁸ Obokata, above n 432, 17.

⁴⁷⁹ *Ibid* 17.

⁴⁸⁰ Gallagher, above n 177, 25.

According to the *Convention against Transnational Organised Crimes*, States Parties are obligated to establish criminal jurisdiction over trafficking crimes.⁴⁸¹ States Parties are obliged to investigate, prosecute, and punish perpetrators of the offences mentioned in the *Trafficking Protocol* (2000).⁴⁸² Shamir demonstrated that the language of the Trafficking Protocol strongly focused on the ‘criminalisation of trafficking, the protection of borders, and the collaboration between States Parties on victim repatriation.’⁴⁸³

The Trafficking Protocol obligates States to provide comprehensive criminal justice policies and programs that would combat trafficking, and prevent and protect the victims from getting re-victimised.⁴⁸⁴ Article 9(4) and (5) stipulate that:

9(4). State Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

9(5). State Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.⁴⁸⁵

States Parties to the Trafficking Protocol have an obligation of prevention. States Parties ought to understand trafficking in certain communities and know that certain groups are more at risk of trafficking.⁴⁸⁶ Mattar explained that a key factor to prevention was anti-trafficking legislation

⁴⁸¹ *United Nations Conventions against Transnational Organised Crimes*, opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003); Gallagher, above n 177, 81.

⁴⁸² Obokata, above n 432; *United Nations Conventions against Transnational Organised Crimes*, opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003) art 3; *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes*, opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003) art 4.

⁴⁸³ Shamir, above n 411, 89.

⁴⁸⁴ Gallagher, above n 177, 416.

⁴⁸⁵ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes*, Date Opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

⁴⁸⁶ Gallagher, above n 177, 416.

that tackled the causes of vulnerability to trafficking: economic, cultural, political and social.⁴⁸⁷ Obokata explains that States Parties to the ICSECR should tackle the root causes and consequences of trafficking, especially if a group is vulnerable to trafficking. Obokata used poverty as an example of vulnerability of a group. The state would be obliged under Article 2(2) of the ICSECR to take non-discriminatory measures in which poor populations could access the provided services without discrimination. Equal access to services may include access to food, health services, appropriate housing, and education.⁴⁸⁸ Obokata further explains how equal access to services and non-discriminatory procedures would include trafficked victims who have the right to obtain non-discriminatory access to justice, if detained.⁴⁸⁹

The Trafficking Principles and Guidelines stipulate that countries need to take ‘specific measures’ to decrease vulnerability:⁴⁹⁰

Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.⁴⁹¹

Addressing vulnerability requires a definition of vulnerability and an illustration of some of the scenarios of vulnerability to trafficking. Mattar defines the victim of a crime as a person ‘who is usually vulnerable due to age, physical or mental condition, or who is otherwise particularly

⁴⁸⁷ Mohamed Mattar, Legal Approaches to Trafficking as a Form of Violence against Women: Implications for a More Comprehensive Strategy in Legislation on the Elimination of Violence against Women (2008) UNODC Doc. EGM/GPLVAW/2008/EP.09 6.

⁴⁸⁸ Obokata, above n 432; see International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 2(2); see Committee on Economic Social and Cultural Rights General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12), UN Doc E/C.12/2000/4 (11 August 2000).

⁴⁸⁹ Ibid.

⁴⁹⁰ Gallagher, above n 177, 417.

⁴⁹¹ See Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002) principle 9 in guideline 7.

susceptible to the criminal conduct.⁴⁹² Vulnerability to trafficking was defined in a UDODC study as ‘those inherent, environmental or contextual factors that increase the susceptibility of an individual to being trafficked.’⁴⁹³ There are several scenarios of vulnerability that were addressed to understand women’s vulnerability.⁴⁹⁴

Addressing trafficking as gender-based violence and gender-based discrimination could decrease the vulnerability of the victims. Gallagher pointed to the measure that States Parties should adopt to tackle vulnerability due to gender.⁴⁹⁵ Measures would include providing safe sheltering options, providing support to the victims, tackling the cultural, social and structural causes of violence, accessing remedies of gender-based violence, reforming the laws to end discrimination against women, and addressing the gender-based violence in the reformed law.⁴⁹⁶

Gallagher explains that in conflict and post-conflict situations, men are vulnerable to forced recruitment by armed groups; whereas women are vulnerable to being trafficked for various purposes related to their gender.⁴⁹⁷ Gallagher mentioned cases of women who belong to developed countries and the organisation of their marriage with foreign nationals as a new form of trafficking in addition to sex tourism.⁴⁹⁸ Kathleen Barry addresses in her chapter ‘The Industrialization of Sex’ that war may cause social displacement that mainly affects refugee

⁴⁹² Mohamed Y Mattar, Incorporating the Five Basic Elements of a Model Anti Trafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention (2006) 14 *Tulane Journal of International and Comparative Law* 357, 385.

⁴⁹³ United Nations Office on Drugs and Crime, *The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol* (UNODC, Vienna, 2015) 13.

⁴⁹⁴ See United Nations Office on Drugs and Crime, *The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol* (UNODC, Vienna, 2015); Mattar, above n 492, 385; Gallagher, above n 177.

⁴⁹⁵ Gallagher, above n 177.

⁴⁹⁶ See e.g. Shannon Drysdale Walsh, ‘Sex Trafficking and the State: Applying Domestic Abuse Interventions to Serve Victims of Sex Trafficking’ (2016) 17(2) *Human Rights Review* 221.

⁴⁹⁷ Gallagher, above n 177, 431.

⁴⁹⁸ *Ibid* 193.

women and children as they confront rape, which results in them being disgraced and rejected by their families, and vulnerable to pimps and organised groups in the sex industry.⁴⁹⁹

Women's access to justice will guarantee their rights to be equally treated before the law including the guarantee of non-discriminatory access to justice, and the right to have 'effective access to remedies' if women's rights were violated.⁵⁰⁰ Procedural and financial impediments often challenge victims of trafficking. The UN Special Rapporteur, on the draft of the principles of effective remedies to victims of trafficking, demonstrates that the right to an effective remedy encompasses 'both the substantive right to remedies and the procedural rights necessary to secure them.'⁵⁰¹ Later, the UN General Assembly provided a summary of the draft above in a report, which stipulates that:

Greater security and protection must be systematically offered to victims of trafficking so that they may have access to redress and recovery, through non-criminalization, the granting of unconditional assistance, the provision of temporary residence status and subsistence support.⁵⁰²

Victims' right to access remedies if their rights are violated, as stipulated under article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR), reads:

Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of

⁴⁹⁹ Barry, above n 7.

⁵⁰⁰ United Nations, 'Women's Rights Are Human Rights' (Paper presented at New York; Geneva, <<http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>.

⁵⁰¹ UN Office of the High Commissioner for Human Rights, *Mandate of the Special Rapporteur on Trafficking in Persons, Especially Women and Children: Draft Basic Principles on the Rights to an Effective Remedy for Trafficked Persons* (22 July 2013) art 1(3).

⁵⁰² UN General Assembly, *Summary of the Consultations Held on the Draft Basic Principles on the Right to Effective Remedy for Victims of Trafficking in Persons: Report of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/26/18 (2 May 2014) para 16.

judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.⁵⁰³

The international treaties on trafficking, including the *Trafficking Protocol* (2000), do not impose any obligation on State Parties to positively identify victims of trafficking.⁵⁰⁴ However, the European Trafficking Convention has provisions enabling victim identification. This is done via provisions that clear the appropriate identification of victims to avoid the dilemma that denies the rights of the victims and creates obstacles during the prosecution of trafficking offenders.⁵⁰⁵ Under the European Trafficking Convention, victims have the right to access services, amenities, and support before the ‘formal identification’.⁵⁰⁶ Failure to identify the victims of trafficking may result in detaining them for criminalised activities, such as prostitution, in the transit or destination country.⁵⁰⁷ Identifying a trafficked person as a victim is crucial for the application of the principle of non-criminalisation.⁵⁰⁸

Gallagher emphasised criminalising the victims of trafficking as the ‘antithesis’ of a ‘victim-centred approach’.⁵⁰⁹ Non-criminalisation of victims regarding their status is an accepted standard. The UN General Assembly, Secretary-General, and the CEDAW Committee have agreed on the importance of not criminalising the victims of trafficking.⁵¹⁰ For instance, the UN Secretary-General stipulates in its 63rd session in 2008 that States:

⁵⁰³ *International Covenant on Civil and Political Rights*, opened for signature, 999 UNTS 171 (entered into force 23 March 1976).

⁵⁰⁴ Mattar, above n 492, 388; Gallagher, above n 177, 281.

⁵⁰⁵ Gallagher, above n 177, 280.

⁵⁰⁶ Mattar, above n 492.

⁵⁰⁷ Gallagher, above n 177, 283.

⁵⁰⁸ Mattar, above n 492, 380-381.

⁵⁰⁹ *Ibid* 380-381.

⁵⁰⁹ Gallagher, above n 177, 282.

⁵¹⁰ *Ibid* 286.

should ensure that victims of trafficking are correctly identified and given the support and protection to which they are entitled in accordance with human rights standards and the principle of non-punishment.⁵¹¹

The Model Law of the UNODC against trafficking recommends that states include a provision of non-punishment for victims of trafficking.⁵¹² The model law has also suggested the consideration of guideline 7 in the Trafficking Principles that stated that:

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.⁵¹³

Regarding exemption from criminal liability for the victims of trafficking due to their victimisation, the *Trafficking Protocol* (2000) leaves it to national laws.⁵¹⁴ However, the European trafficking Convention provides an exemption from criminal liability if the victim was identified as a victim of trafficking.⁵¹⁵ Mattar explains that some countries combine the principle of non-criminalisation with the cooperation of the witness [victim] and with the criminal justice system in assisting with procedures and prosecution of the traffickers.⁵¹⁶

Within the international treaties, there is no trafficking treaty addressing the issue of detention of the victims of trafficking. However, the Trafficking Principles and Guidelines consider the problem of victim detention to be related to the criminalisation of the victim. Victim detention is implicitly unlawful and inappropriate treatment of victims.⁵¹⁷ The Trafficking Principles and

⁵¹¹ United Nations General-Assembly, *Trafficking in Women and Girls: Report of the Secretary General* UN Doc A/63/215 (4 August 2008) Para 62.

⁵¹² United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons* (6 July 2009), 32-34.

⁵¹³ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002) Guideline 7.

⁵¹⁴ Mattar, above n 492, 382.

⁵¹⁵ Ibid 383.

⁵¹⁶ Ibid 383.

⁵¹⁷ Ibid 289; Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002).

Guidelines stipulate that States, inter-governmental States or NGOs should ‘[consider and ensure] that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.’⁵¹⁸ According to Guideline 6 paragraph 1 of the Trafficking Guidelines and Principles, States should:

[Ensure], in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.⁵¹⁹

Gallagher explained that a victim might be detained for committing acts that are criminalised in the destination country, for example, prostitution-related offences. They may also be detained if they were identified as an illegal immigrant or a victim of trafficking, and detained in shelters either for their protection or if the victim was not willing to cooperate with the criminal justice system, or in holding before deportation.⁵²⁰

The CEDAW obligates States Parties to the Convention to establish legal protection for women in a non-discriminatory manner. Article 2 of the CEDAW should eliminate discrimination against women by appropriate means, which includes:

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.⁵²¹

⁵¹⁸ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002), guideline 2 para 6.

⁵¹⁹ Ibid.

⁵²⁰ Gallagher, above n 177, 288.

⁵²¹ *United Nations Convention on the Elimination of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 2(c).

Article 2 of the CEDAW established the obligation on States Parties to provide ‘effective protection’ for women from discriminatory activities.⁵²²

Regarding protection, Hyland explains that the Trafficking Protocol was weak in protections for victims, as provided in Article 6.⁵²³ The phrases used concerning protection did not employ obligatory and powerful language.⁵²⁴ Article 6 of the Trafficking Protocol (2000) stipulates:

In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential. 2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence. 3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of – 4 – trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities. 4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care....⁵²⁵

Some countries may not provide support, protection, and information for the criminal administration to prosecute the offenders, unless victims cooperate with the government.⁵²⁶

Mattar explains that the victim’s cooperation is required in meeting procedural and prosecution

⁵²² United Nations, ‘Women’s Rights Are Human Rights’ (Paper presented at New York; Geneva, <<http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>.

⁵²³ Kelly E Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2001) 8(2) Human Rights Brief 30.

⁵²⁴ *Ibid* 31.

⁵²⁵ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes, Date Opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003) art 6.

⁵²⁶ Shamir, above n 411.

requirements in a trafficking case.⁵²⁷ Shamir pointed out that the *Trafficking Protocol* (2000) was silent as to whether States Parties should provide support in cases where victims refuse to cooperate.⁵²⁸ Any silence is relevant to that fact that there is an international trend of considering trafficking as a matter that requires criminalisation and punishment.⁵²⁹ Countries were favouring criminalisation of perpetrators over the protection of victims for some reason including the association of trafficking with illegal immigration and people smuggling.⁵³⁰ In addition to the trafficking crimes' connection to prostitution, prostitution was prohibited and criminalised in a great number of countries during the time of drafting the *Trafficking Protocol* (2000).⁵³¹ *The European Convention on Trafficking* asserted the need to provide care and support separate to the victim's cooperation with the criminal administration.⁵³²

Trafficking of women is gender-based violence, as confirmed by General Recommendation No. 19 of the CEDAW Committee.⁵³³ The General Recommendation addresses the vulnerability of prostitutes and the risk of experiencing gender-based violence and rape.⁵³⁴ However, considering sex work (prostitution) as gender-based violence was not included within the human rights framework. Raymond disagreed with the exclusion of free-will prostitution from forms of violence against women in the human rights framework.⁵³⁵ She argued in her paper that the sex

⁵²⁷ Seaman, above n 474, 287.

⁵²⁸ Hila Shamir, above n 411, 89.

⁵²⁹ Seaman, above n 474, 287.

⁵³⁰ Ibid 294.

⁵³¹ Ibid 294-295.

⁵³² Mattar, above n 492; Gallagher, above n 177.

⁵³³ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19 on Gender Based Violence against Women* (1992) CEDAW/C/1992/11/GC para 15.

⁵³⁴ see Vijayarasa, above n 405.

⁵³⁵ But see ibid 50.

work industry flourishes on this exclusion and distinction between force and free-will prostitution.⁵³⁶

Regarding access to justice for the sex workers, Decker et al discuss the withdrawal of some criminal justice systems from protecting sex workers.⁵³⁷ This might be because reporting to the police is intimidating, given their perception of police' attitude that sex workers are incapable of being raped.⁵³⁸ Decker et al explain that this is found due to the stigma and discrimination that these women suffer. Regarding criminalisation and detention, Decker et al highlighted police repression of how it becomes more powerful towards the sex workers in criminal justice systems where sex work is criminalised.⁵³⁹ Sex workers may suffer from discrimination and be denied health care and welfare services. When they request these services, they do so without exposing their profession. Decker et al explain that once sex workers are discovered they may face 'backlash'.⁵⁴⁰

The rights of sex workers are infrequently addressed under human rights treaties or the Human Rights Bill as the rights of human beings. These violations include 'social injustices including poor working conditions, violence, police harassment, and discrimination.'⁵⁴¹ Decker et al suggested that these rights were seen as obstacles to HIV prevention strategies and the 'successful treatment for sex workers'.⁵⁴² Shannon et al has done a study on 237 sex worker, by performing a baseline visit via follow up visits (at least one visit), and found that around 57% of

⁵³⁶ Janice G Raymond, 'Prostitution as Violence against Women: NGO Stonewalling in Beijing and Elsewhere' (1998) 21(1) *Women's Studies International Forum* 1–9.

⁵³⁷ Decker et al, 'Human Rights Violations against Sex Workers: Burden and Effect on Hiv' (2015) 385(9963) *The Lancet* 186–99

⁵³⁸ Ibid.

⁵³⁹ Ibid.

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.

⁵⁴² Ibid.

the sex-workers experienced gender-based violence at a certain point while practising sex work over a period of 18 months.⁵⁴³ However, the findings were not generalisable.

One of the international documents that refers to the rights of sex workers is the CEDAW Committee in its General Recommendation No. 19⁵⁴⁴ paragraph 15 that:

Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.⁵⁴⁵

Both trafficking and prostitution were linked to gender-based violence in the GR No. 19.⁵⁴⁶

Vijayarasa explains how this linkage would risk adopting a position where both prostitution and trafficking do not differ from each other.⁵⁴⁷

B *Effectiveness of Human Rights and Trafficking Treaties*

The due diligence standard sets out the legal responsibility of the state to act upon violations of human rights caused by private individuals.⁵⁴⁸ According to Erturk, the treatment of violence against women in human rights efforts is mostly taken regarding the provision of welfare and humanitarian aid. The due diligence application is related to reacting to violence against women once it takes place, instead of making precautionary approaches to prevent violence from

⁵⁴³ Kate Shannon, Thomas Kerr, Steffanie A Strathdee, Jean Shoveller, Julio S Montaner and Mark W Tyndall, *Prevalence and structural correlates of gender based violence among a prospective cohort of female sex workers* (2009) 339 *BMJ* 1.

⁵⁴⁴ Decker et al, above n 537, 186–99.

⁵⁴⁵ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19 on Gender Based Violence against Women* (1992) CEDAW/C/1992/11/GC para 15.

⁵⁴⁶ Vijayarasa, above n 405, 50.

⁵⁴⁷ *Ibid*

⁵⁴⁸ Gallagher, above n 177, 241.

happening.⁵⁴⁹ Erturk pointed out that there is less focus on the ‘general obligation of preventing’, reforming and changing the community, and social contexts associated with female subordination.⁵⁵⁰

Erturk pointed to the UN mandate of eliminating violence against women by tackling the root causes at different levels.⁵⁵¹ Within this framework under the general protection of due diligence obligation, the focus would shift from ‘victimisation-oriented approach’ to ‘one of empowerment’.⁵⁵² In his paper, Erturk argued for the potential expansion of the obligation of due diligence to include the obligation of engaging in the ‘root causes of violence against women’.⁵⁵³

The state would be held responsible if it does not prevent, respond or remedy the violation of the rights of women.⁵⁵⁴ Gallagher pointed to General Recommendation No. 19 of the CEDAW Committee, which stipulates that:

The Convention calls on States Parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.⁵⁵⁵

As the UN cannot enforce the implementation of the trafficking suppression agreements, NGOs have held the burden of combating human trafficking and/or rescuing the victims.⁵⁵⁶ According

⁵⁴⁹ Yakin Erturk, ‘The Due Diligence Standard: What Does It Entail for Women’s Rights?’ in Carin Benninger-Budel (ed), *Due Diligence and Its Application to Protect Women from Violence* (Nijhoff Law Publishers, 2008) vol 73, 27, 28.

⁵⁵⁰ Ibid.

⁵⁵¹ Ibid.

⁵⁵² Ibid 28.

⁵⁵³ Ibid 29.

⁵⁵⁴ Gallagher, above n 177.

⁵⁵⁵ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19 on Gender Based Violence against Women* (1992) UN Doc CEDAW/C/1992/11/GC para 9.

⁵⁵⁶ Yesak Alul, *Human Trafficking: The Failure of States to Eradicate Slavery* (Research Seminar, College of Saint Benedict and Saint John’s University, 2014); UNODC, Inter-Agency Coordination Group against Trafficking in Persons, Issue Paper: Providing Effective Remedies for Victims of Trafficking in Persons (January 2016), 9.

to Alul, NGOs would either buy the freedom of trafficked victims or knock down doors to help them escape from entrapment.⁵⁵⁷ In his paper, Alul explained that NGOs are a non-powerful entity lacking the economic ability to help break the bars and free the trafficked victims. The role of NGOs in criminal justice will be discussed in light of governance of women's access to services, especially sex workers and trafficked victims in the following chapter as understanding that their role is important in understanding my case study. Erturk argued for the need to regard 'non-state actors as duty bearers with respect to gender-based violence'.⁵⁵⁸

The above discussion of human rights treaties as being silent on some issues related to protecting and remedying the victims gives rise to questions as to whether human rights law gives proper consideration to cultural diversity in the drafting of human rights multilateral treaties. I do not assume that it is the only reason for silence on this matter. However, discussion from several scholars does give rise to cultural diversity and relativity. According to Reitman, cultural relativists assumed that human rights is a 'modern form of imperialism, with Western ... countries seeking to impose their particular views'.⁵⁵⁹ Cohen alleged that there is a basis for hypothesising the characteristics of individuals in Western cultures as different from individuals in other cultures. This is not to say that humans are different from a racial perspective, but the lived experience, and traditional and cultural backgrounds shape our views and thoughts. Cohen asked: what constitutes a common human value, and what should be considered as 'context-determined aspects of specific traditions'?⁵⁶⁰ Cohen explained that the Western approach to human rights, which favoured the rights of individuals over the rights of the collective, was not

⁵⁵⁷ Alul, above n 556.

⁵⁵⁸ Erturk, above n 549, 27, 28.

⁵⁵⁹ Oonagh Reitman, 'Cultural Relativist and Feminist Critiques of International Human Rights – Friends or Foes?' (1997) 100(1) *statsvetenskap tidskrift* 100, 104.

⁵⁶⁰ Ronald Cohen, 'Human Rights and Cultural Relativism: The Need for a New Approach' (1989) 91(4) *American Anthropologist* 1014, 1016.

appropriate to other cultures.⁵⁶¹ Nayak also referred to the cultural relativists' rejection of the consequent condemnation of cultural habits because human rights law is grounded in 'western values'.⁵⁶² Further, failure to make changes may result in adopting laws favouring the interest of a misogynous culture over the rights of female victims,⁵⁶³ especially as victims might refuse to identify as victims.⁵⁶⁴ However, it is notable that some issues were left out of human rights treaties, leaving it to each country, depending on their context.

Several scholars have argued for considering 'cultural context' when discussing the rights of trafficked women. Bruch explains that having several definitions on an international level for human trafficking can lead to having several definitions for different contexts.⁵⁶⁵

Several scholars have discussed intersectionality as an approach to understanding discrimination and gender-based violence against women.⁵⁶⁶ Campbell argued that though CEDAW does not clearly address intersectional discrimination, CEDAW is implicitly dedicated to ending discrimination against women regarding intersecting sources of discrimination.⁵⁶⁷ As discussed above, the CEDAW Committee pointed to intersectionality and the importance of tackling intersecting identities that create obstacles hindering women from gaining their rights equally with men. On the other hand, Thornton examined the intersecting sources of discrimination in

⁵⁶¹ Ibid.

⁵⁶² Bhabani Shankar Nayak, 'Challenges of Cultural Relativism and the Future of Feminist Universalism' (2013) 6(2) *Journal of Politics and Law* 83, 84.

⁵⁶³ See Andrews, above n 190.

⁵⁶⁴ Becca C Johnson, 'Aftercare for Survivors of Human Trafficking' (2012) 39(4) *Social Work and Christianity: Journal of the North American Association of Christians in Social Work* 370.

⁵⁶⁵ Bruch, above n 388, 1.

⁵⁶⁶ See, eg, Shreya Atrey, *Realising Intersectionality in Discrimination Law* (2015) PhD thesis Oxford University; Anthias, above n 29, 153–71; Meghan Campbell, 'Cedaw and Women's Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination' (2015) 11(2) *Revista Direito GV* 479, 479.

⁵⁶⁷ Meghan Campbell, 'Cedaw and Women's Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination' (2015) 11(2) *Revista Direito GV* 479, 479.

her paper ‘Can We Feminise Human Rights?’⁵⁶⁸ She referred to several court cases on discrimination, which were rejected because discrimination laws did not tackle consolidated and intersecting sources of discrimination.⁵⁶⁹

C Summary

The human rights framework provides a platform for tackling sex trafficking of women by imposing obligations on States Parties to the relevant treaties, including the CEDAW and the *Trafficking Protocol* (2000). According to the above literature, not only would countries have to prevent the crime, prosecute perpetrators, and protect the victims, but also would address the causes of women’s oppression and gender discrimination including sex trafficking and sex work exploitation.

The human rights framework gives space for a comprehensive approach to sex trafficking of women and sex work exploitation. As part of this summary, I depend on Bruch and Smith’s point of view on the approach to trafficking of women. Bruch demonstrates how not adopting a comprehensive approach to trafficking would give governments the excuse not to address real violations when only focussing on the concept of trafficking.⁵⁷⁰ Similarly, Smith argued and explained the limitations of international law in tackling sex trafficking from a criminal law perspective.⁵⁷¹ She argued that the countries that are States Parties to the Trafficking Protocol could address their compliance to protect the victims in light of ratifying the Trafficking Protocol and passing the needed legislation. Smith noted:

⁵⁶⁸ Thornton, above n 332, 319.

⁵⁶⁹ Ibid.

⁵⁷⁰ Bruch, above n 388, 1.

⁵⁷¹ Heather M Smith, ‘Sex Trafficking: Trends, Challenges, and the Limitations of International Law’ (2011) 12(3) *Human Rights Review* 271.

Ten years from the passage of the Palermo Protocol there is a danger that the momentum that has developed around the issue of trafficking will recede. States that jealously guard their sovereignty can now say that they have ratified the appropriate treaties and passed the necessary laws.⁵⁷²

In light of Smith and Bruch's argument, I reviewed the literature of various feminist approaches to sex trafficking and sex work, in addition to jurisdictional approaches to sex work. I will refer to criminal justice responses to sex trafficking and sex-work exploitation from a feminist-women's rights perspective.

Addressing the relevant human rights material is sufficient enough to provide the minimum standard for the treatment of sex trafficked victims and sex workers as human beings. Even if human right law lacks binding rules for states, it can still provide measures for legal analysis to set out the obligation on Jordan regarding sex trafficked victims and sex workers. In addition to pinpoint the human rights obligations to these women if the data prove that Jordan does not comply with the relevant ratified treaties. Nonetheless, the human rights law provides the NGOs with a basis to question Jordan's obligations towards those women.

⁵⁷² Ibid.

V FEMINISM, THE SEX WORK DEBATE, SEX TRAFFICKING AND GENDER-BASED VIOLENCE

A *The sex work debate*

In times of negotiating and drafting of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Against Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crimes*,⁵⁷³ various trafficking debates have flared in theorising the relation between sex trafficking and sex work.⁵⁷⁴ The definition of sex trafficking crimes in Article 3 of this Protocol is broad regarding the relation between sex trafficking and consensual prostitution, and is passive as to whether consensual prostitution should be tackled as a sex trafficking crime that is committed against females.⁵⁷⁵ Two basic feminist doctrines on the relationship between consensual sex work (prostitution) and trafficking examined Article 3 of the Trafficking Protocol.⁵⁷⁶ They consider the proper response to prostitution and question whether prostitution (sex work) is a human trafficking crime that constitutes violence against women or whether it is merely a sex worker's freedom to choose the occupation.⁵⁷⁷ Those main feminist doctrines are liberal feminist (also known as individualist\

⁵⁷³ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes, Date Opened for signature 25 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

⁵⁷⁴ See e.g. Sheila Jeffreys, 'Prostitution, Trafficking and Feminism: An Update on the Debate' (2009) 32(4) *Women's Studies International Forum* 316; and Doezema, above n 433.

⁵⁷⁵ Gallagher, above n 177.

⁵⁷⁶ Ibid; Halley et al, above n 380, 349–50.

⁵⁷⁷ Rebecca Beegan, 'Prostitution and sex work: Situating Ireland's New Law on Prostitution in Radical and Liberal Feminist Paradigms' (2017) 17(1) *Irish Journal of Applied Social Studies* 59, 61.

regulationist) and radical feminism (also known as abolitionist\ structuralist).⁵⁷⁸ In light of the feminist sex-work debate, there is confusion among scholars in defining sex work, sex trafficking and sexual exploitation, which resulted in dilemmas in service provision and criminal justice approaches to the prosecution of perpetrators.⁵⁷⁹ Lara Gerassi sought to quote definitions of sex work and sex trafficking in light of the confusion among these two terms and other interrelated terms. Gerassi cited Weitzer's definition of sex work as the 'exchange of sexual services, performances, or products for material compensation. It includes activities of direct physical contact between buyers and sellers... as well as indirect sexual stimulation....'⁵⁸⁰ Gerassi quoted the definition of sex trafficking from the US federal Trafficking Victims Protection Act (TVPA) as 'the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.'⁵⁸¹

This chapter grounds one the main blocks from my [umbrella of literature](#), which is presented in Chapter III. A feminist discussion of sex trafficking and sex work and the relationship or distinction between the two terms and the theorising of sex work is essential to show how each country might have context-specific regime in dealing with sex work. The discussion of the feminist thoughts on sex trafficking and sex work and the criminal justice practices in light of these feminist thoughts is essential to understanding what the Jordanian criminal justice response to sex work is. I also present the administration of criminal justice for women facing gender-

⁵⁷⁸ See O'Connell Davidson, above n 221; Halley et al, above n 380, 335; Min Liu, *Migration, Prostitution and Human Trafficking: The Voice of Chinese Women* (Transaction Publishers, 2011) 38-9.

⁵⁷⁹ Lara Gerassi, 'From Exploitation to Industry: Definitions, Risks, and Consequences of Domestic Sexual Exploitation and Sex Work Among Women and Girls' (2015) 25(6) *Journal of Human Behavior in the Social Environment* 591.

⁵⁸⁰ *Ibid*; see Ronald Weitzer, *Sex for Sale: Prostitution, Pornography, and the Sex Industry* (Psychology Press, 2000), 1.

⁵⁸¹ *Ibid*; Trafficking Victims Protection Act, 22USC § 7102(9)(a).

based violence (including sexual exploitation). This is essential as I find that the Jordanian criminal justice had similar obstructions in criminal justice administration.

In this chapter, I use both terms – sex work and prostitution – to refer to consensual sex work. Scholarly papers reviewed in this chapter used either sex work or prostitution in referring to both the legal and non-legal sex industry.

Farley demonstrated that legalised sex work is a facilitator for trafficking women.⁵⁸² She pointed to a report on post-decriminalisation of sex work in New Zealand. She noted an increase in the numbers of women coerced to work in prostitution involving high rates of coercion by Johns or pimps.⁵⁸³ Furthermore, she explained that social stigma continued post-decriminalisation. Also, sex workers preferred not to report violence to the police as they mistrust the police.⁵⁸⁴

Several scholars including Sheila Jeffreys, Mary Sullivan, Janice Raymond and Kathleen Barry agree that sex work should be abolished as it constitutes violence against women.⁵⁸⁵ Scholars writing against legalising sex work described the physical and psychological harm it causes to show how harmful it is to women. Included was the description of the anus and vaginal blood discharge, bruises, cuts, traumatic stress, sexually transmitted diseases, unwanted pregnancies, abortions, and potential death, to support their claims on the difference between sex work and other occupation.⁵⁸⁶ According to Jeffreys, abolitionism classifies prostitution of women as a

⁵⁸² Melissa Farley, 'Theory Versus Reality: Commentary on Four Articles About Trafficking for Prostitution' (2009) 32(4) *Women's Studies International Forum* 311.

⁵⁸³ Ibid.

⁵⁸⁴ Ibid.

⁵⁸⁵ Jeffreys, above n 574; Barry, above n 7; Janice G Raymond, *Not a Choice Not a Job* (Nebraska University Press, 2013); see Michelle Madden Dempsey, 'Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism' (2010) 158(6) *University of Pennsylvania Law Review* 1729.

⁵⁸⁶ Dempsey, above n 585, 1729; Jeffreys, above n 574.; Kathleen Barry, *Female Sexual Slavery* (Prentice-Hall, 1979); see Marinova and James, above n 367, 250; see also Melissa Farley and Howard Barkan, 'Prostitution, Violence, Posttraumatic Stress Disorder' (1998) 27(3) *Women and Health* 37.

violation of CEDAW, by regarding it as a harmful cultural practice against women that should be eliminated.⁵⁸⁷

Conversely, liberal scholars consider sex work as legitimate labour.⁵⁸⁸ They called for guaranteeing the rights of the trafficked persons; they also considered it important to adopt a definition that does not overlook individuals' right to freedom of choice.⁵⁸⁹ Liberal feminists considered agency and autonomy of the sex worker who consents to sell sex as legitimatising the sex contract.⁵⁹⁰

Liberal and radical feminist thought influenced criminal justice legal reforms on sex work and sex trafficking, as to their relationship and their governance.⁵⁹¹ They are not the only influences on national policing and legal reform.⁵⁹² The most known governance paradigms for sex trafficking and sex work are full criminalisation, partial decriminalisation (abolition), which can be seen as partial criminalisation, legalisation (labour paradigm) and decriminalisation.⁵⁹³ Each of these paradigms (regimes) treat differently the sex worker, the pimp, brothel managers and property owners. Full criminalisation (prohibition) refers to the criminalisation of all parties in the sex industry, including the female sex workers.⁵⁹⁴ In prohibition, all features of the sex work

⁵⁸⁷ Jeffreys, above n 574; *United Nations Convention on the Elimination of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 5(a).

⁵⁸⁸ See e.g. Jo Doezema, above n 433; Alison Murray, 'Debt Bondage and Trafficking: Don't Believe the Hype' in Reina Lewis and Sara Mills (eds) *Feminist Postcolonial Theory: A Reader* (Routledge, 2003) 413; Kate Butcher, 'Confusion Between Prostitution and Sex Trafficking', (2003) 361(9373) *The Lancet* 1983.

⁵⁸⁹ Halley et al, above n 380, 350.

⁵⁹⁰ See Jo Doezema above n 433, 82.

⁵⁹¹ Ibid.

⁵⁹² See Uçarer, above n 375, 230.

⁵⁹³ See Ibid; see Halley et al, above n 380, 335; see also Marinova and James, above n 367.

⁵⁹⁴ Halley et al, above n 380, 335; Barry, above n 7, 222; See Marinova and James, above n 367, 234; Janie A. Chuang, 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy' (2010) 158(6) *University of Pennsylvania Law review* 1655.

industry are criminal, including selling and buying of sex and third-party involvement in managing, pimping, brothel keeping and owning.⁵⁹⁵

Decriminalisation is the repealing of laws that criminalise sex work or procuring and considering it as legitimate work like other professions.⁵⁹⁶ Decriminalisation differs from legalisation, as legalisation requires the interference in sex work by imposing laws and regulations that restrict sex work and require compliance with certain obligations.⁵⁹⁷ Legalisation is where certain sexual services in the industry are legal, regulated and limited by state laws. According to Lutnick and Cohan, not all types of sex work are permitted within a legalised system.⁵⁹⁸ Whether it was an abolitionist, legalisation or decriminalisation approach, they agreed in not criminalising women working as prostitutes.⁵⁹⁹

Distinguishing is required between the feminist abolition and conservative abolition perspectives. Conservative abolition considers prostitution as a 'sin' that does not comply with religious beliefs.⁶⁰⁰ According to a conservative abolition position, women working in sex professions equate with pimps, brothel owners and customers who seek the purchase of sex. Therefore, female prostitutes are condemned for their work. As Dempsey noted, conservative abolition differs from feminist abolition because conservatives do not agree that prostituted women are vulnerable.⁶⁰¹ Conservative abolitionists target all forms of sexual behaviours,

⁵⁹⁵ Halley et al, above n 380, 338; See Marinova and James, above n 367.

⁵⁹⁶ See Halley et al, above n 380, 335.

⁵⁹⁷ Geetanjali Gangoli and Nicole Westmarland, 'Introduction: Approaches to Prostitution' in Geetanjali Gangoli and Nicole Westmarland (eds), *International Approaches to Prostitution: Law and Policy in Europe and Asia* (The Policy Press, University of Bristol, 2006) 1, 14; See also *Decriminalisation of Prostitution V Legalisation* (2010) English Collective of Prostitutes: Safety for Sex Workers
<<http://prostitutescollective.net/2010/09/28/decriminalisation-of-prostitution-v-legalisation-2/>>.

⁵⁹⁸ Alexandra Lutnick and Deborah Cohan, 'Criminalization, Legalization or Decriminalization of Sex Work: What Female Sex Workers Say in San Francisco, USA' (2009) 17(34) *Reproductive Health Matters* 38, 38.

⁵⁹⁹ Melissa Farley, above n 582.

⁶⁰⁰ Chuang, above n 594, 1655.

⁶⁰¹ Dempsey, above n 585, 1729.

including heterosexual, same-sex and masturbation.⁶⁰² This is where the difference between the two doctrines lies. Conservative feminists view prostituted women as sinners who should be blamed for sex trafficking. I understand that this view is in line with prohibiting (full criminalisation) sex work.

In her paper, Farley presented a study done in nine countries showing that 89 percent of women who have chosen sex work as a profession said that they could not find any substitute occupation.⁶⁰³ Another study reported by Farley showed that after legalising prostitution in Germany and the Netherlands, 80 percent of females working in the sex industry were trafficked females.⁶⁰⁴ A quantitative study, done by Cho et al, asked ‘Does legalised prostitution increase human trafficking?’ The findings confirm that legalising the sex industry in both Germany and the Netherlands has increased the number of trafficked victims into prostitution.⁶⁰⁵

In her paper, Farley criticised decriminalising or legalising the sex industry. She explained that ignoring the opinion of sex workers who generally preferred to escape this occupation would lead to a situation where theory does not relate to reality. She further explained that this theoretical underpinning would result in referring to prostitution as a form of work and trafficking as a problem of immigration. Farley criticised Limoncelli’s approach to the problem that trafficking is a ‘gendered component of economic globalisation’.⁶⁰⁶ Limoncelli suggested considering prostitution as a form of labour rights, in addition to establishing sex work unions

⁶⁰² Ibid.

⁶⁰³ Farley, above n 582.

⁶⁰⁴ Ibid.

⁶⁰⁵ Seo-Young Cho, Axel Dreher and Eric Neumayer, ‘Does Legalized Prostitution Increase Human Trafficking?’ (2013) 41(1) *World Development* 67.

⁶⁰⁶ Farley, above n 582.; Limoncelli considered the understanding and analysis of trafficking as a ‘gendered component of economic globalization’ as important: Stephanie A Limoncelli, ‘The Trouble with Trafficking: Conceptualizing Women’s Sexual Labor and Economic Human Rights’ 261; see Stephanie A Limoncelli, ‘Human Trafficking: Globalization, Exploitation, and Transnational Sociology’ (2009) 3(1) *Sociology Compass* 72, 72.

that contribute to discovering trafficked victims.⁶⁰⁷ Farley considered Limoncelli's suggestion as a theoretical approach that does not reflect the reality of these unions; that is, inter alia advertising agencies for sex work, pimps and brothel owners; therefore, unions could not be held as effective 'watchdogs'.⁶⁰⁸

Radical feminists criticised the focus of liberal feminists on the need to regulate prostitution, arguing that liberal feminists ignored scrutinising trafficking from class, gender inequalities and capitalism perspectives.⁶⁰⁹ Jeffreys pointed out that states should dismantle certain harmful practices.⁶¹⁰ She pointed to 'sexual contract' between the pimp and the prostitute as the harmful practice that is perceived as an agreement in which the sex worker contracts with the pimp, giving him the authority to allow men access to her body via 'sexual contracts'.⁶¹¹ This form of 'social contract' is either legalised, decriminalised or regulated under a legal system's laws.⁶¹²

The neo-liberal use of terms such as 'agency', 'choice' and 'entrepreneurship' was wide-spread among feminist scholars in discussion of prostitution.⁶¹³ Jeffreys' paper, 'Beyond Agency and Choice in Theorizing Prostitution', pointed to the widely used word 'agency' to refer to the free will of individuals in theorising gender and development theory in feminist discourse.⁶¹⁴ Jeffreys referred to the feminist-anthropologists' use of the term 'agency' in their scholarly writings. Jeffreys also discussed a paper written by anthropologist Saba Mahmood to show its reflection

⁶⁰⁷ Farley, above n 582; see Stephanie A Limoncelli, 'The Trouble with Trafficking: Conceptualizing Women's Sexual Labor and Economic Human Rights' 32(4) *Women's Studies International Forum* 261.

⁶⁰⁸ Farley, above n 582.

⁶⁰⁹ Jeffreys, above n 574; see Kathleen Barry, above n 7.

⁶¹⁰ Jeffreys, above n 574.

⁶¹¹ Jeffreys, above n 574; Carole Pateman, *The Sexual Contract* (Polity, 1988).

⁶¹² Pateman, above n 611; see Jeffreys, above n 574.

⁶¹³ See Raymond, above n 585; Jeffreys, 'above n 574.

⁶¹⁴ Sheila Jeffreys, 'Beyond 'agency and Choice in Theorizing Prostitution' In Maddy Coy (ed) *Prostitution, Harm and Gender Inequality: Theory Research and Policy* (Taylor and Francis, 2012) 73.

on liberal feminist research, which sought to investigate the theorising of agency in Egyptian Muslim women who go to mosques.⁶¹⁵ Mahmood observed the Muslim women who meet in the mosque to teach each other how to be a Muslim woman, wear the veil, have ‘piety’, pray daily and submit their will to God.⁶¹⁶ This study aimed to understand the Muslim women’s agency in wearing the veil and submitting their will to a set of rules.⁶¹⁷ Mahmood questioned whether conceptualising women’s agency was about the ability to resist the society’s social norms. Gaining their agency can be exercised through the fitting into society instead of resisting social norms.⁶¹⁸ Jeffreys explained that anthropologists could use Mahmood’s definition of agency to justify relations of female subordination, including women’s submission to males in practising sex work.

In assessing whether legalised prostitution increases sex trafficking, researchers have depended on research methodologies including those that are qualitative and quantitative. According to Cho et al, three types of data were used from available research on sex trafficking: country reports, characteristics of victims and trafficking routes.⁶¹⁹ Cho et al emphasised that most of the available research relied on anecdotal evidence based on views and opinions to investigate whether legalised prostitution increases trafficking. They emphasised that research on human trafficking has lacked ‘rigorous evidence’. In their paper, Cho et al constructed their empirical analysis using economic theory to underpin the ‘scale effect’ and ‘substitute effect’ of

⁶¹⁵ Ibid.

⁶¹⁶ Saba Mahmood, above n 207.

⁶¹⁷ Ibid.

⁶¹⁸ Ibid.

⁶¹⁹ Cho et al, above n 605, 67.

legalisation of prostitution by measuring supply and demand rules on quantitative data from 150 countries.⁶²⁰

In a nutshell, Cho et al found that the scale effect positively increases trafficking. On the contrary, the substitution effect moves the supply and demand away from illegal prostitution. This means that the legalisation of prostitution has increased sex trafficking, whereas criminalising the purchase of sex has decreased sex trafficking.

Marinova and James' research that is based on data from Sweden, Netherlands and Germany sought to explore whether legalising sex work legalisation increases sexual exploitation. They reached a similar conclusion to Cho et al.⁶²¹

Several sex workers rights' institutions have advocated decriminalisation or regulation approaches to sex work. Scholars pointed to several sex workers' rights movements in various jurisdictions.⁶²² For example, Durbar, an organised forum (NGO) based in India, which advocated for the rights sex workers, was investigated in a qualitative study by Bandyopadhyay et al regarding their opinion in the trafficking debate as pro-regulation of sex work.⁶²³

Bandyopadhyay et al interviewed sex workers in India. According to Bandyopadhyay et al, regulating sex work was essential and did not contradict the aims of combating sex trafficking.⁶²⁴

According to Bandyopadhyay et al, changing the status of sex work to legal and legitimatising the sex work occupation would be the right path to de-stigmatising sex workers and end their vulnerability.⁶²⁵ Bandyopadhyay et al included Durbar's definition of sex trafficking:

⁶²⁰ Ibid

⁶²¹ Marinova and James, above n 367.

⁶²² Jo Doezeema, above n 433.

⁶²³ Ibid.

⁶²⁴ Ibid.

⁶²⁵ Ibid.

‘Trafficking into sex by definition involves women and children being employed against their will, either through direct force or through deception, violating their fundamental rights to self-determination and autonomy over their bodies’.⁶²⁶

The regimes of legalisation and abolition as justified approaches to sex work, radical thought was in line with the idea of eliminating all forms of the sexual trade involving women and girls.⁶²⁷ Radical feminism’s rationale for supporting the ideology of abolishing sex trafficking was that trafficking harms women, which results in further gender inequality.⁶²⁸ The abolition approach has focused on this issue from a feminist perspective to show how the harm caused to prostituted females is attributed to the patriarchal system.⁶²⁹

The feminist abolitionists theorised prostitution of women as a criminal offence, given the harm that would befall sex workers.⁶³⁰ However, according to this perspective, prostituted women are exempt from liability.⁶³¹ Consequently, criminal liability would be limited to sex buyers, brothel owners and pimps.⁶³² Within feminist abolitionist thought, buying sex harms women and girls. Therefore, buying sex services should be considered an offence. Dempsey and Chuang sought to analyse the purchase of sex and its criminological nature as an offence that holds criminal liability.⁶³³

⁶²⁶ Ibid.

⁶²⁷ Dempsey, above n 585.; Barry, above n 7.

⁶²⁸ Dempsey, above n 585.

⁶²⁹ Ibid; Halley et al, above n 380, 335; Barry above n 7, 221.

⁶³⁰ See Dempsey, above n 585.

⁶³¹ Halley et al, above n 380, 338-9.

⁶³² Ibid.

⁶³³ Chuang, above n 594, 1655; Dempsey, above n 585.

The criminal liability of the customers (Johns) has been a major point of discussion by radical feminists.⁶³⁴ Dempsey raised the argument of criminal complicity; she argued that purchasers of sex are criminally responsible, since they encourage pimps to procure and traffic women for profit.⁶³⁵ Dempsey's argument was justified, in accordance with Baker's view, regarding a person's culpability for such conduct. Dempsey revisited Baker's illustration of a customer's responsibility, arguing that his conduct 'created the demand for the act that causes the harm'.⁶³⁶ Dempsey regarded customers as having possessed the *mens rea* of 'recklessness' once they create a market via demand for sex services, which leads to abusive pimping and the risk of trafficking.⁶³⁷ Alternatively, Bridget Anderson and Julia O'Connell Davidson explain that accepting the argument of eradicating (abolishing) commercial sex trade to suppress trafficking is a 'draconian' concept, as much as eliminating the demand of carpets would abolish the forced child labour in carpet manufacturing.⁶³⁸

Dempsey explained the difference between purchasing sex and purchasing carpets, shoes or any other material product.⁶³⁹ She supports the standpoint for criminalising the purchase of sex because the buyer inflicts 'direct harm' on the trafficked person. Dempsey noted that multiple actors enter the 'supply chain,' creating a remote relation between the buyer and the trafficked

⁶³⁴ See Chuang, above n 594; Dempsey, above n 585; John Gardner, *Offences and Defences: Selected Essays in the Philosophy of Criminal Law* (Oxford Scholarship Online, 2009).

⁶³⁵ Dempsey, above n 585.

⁶³⁶ Ibid; Dennis J Baker, 'The Moral Limits of Criminalizing Remote Harms' (2007) 10(3) *New Criminal Law Review* 370.

⁶³⁷ Dempsey, above n 585.

⁶³⁸ Bridget Anderson and Julia O'Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study* (International Organization for Migration, 2003)10–11; Dempsey, above n 585.

⁶³⁹ Ibid.

child. Dempsey said that through buying sex, the customer risks direct harm to the female he penetrated.⁶⁴⁰

Gardner argued for the customer's criminal liability on the grounds that the subject (prostitute) is objectified, as the customer would treat the sex seller (prostitute) as nothing more than an object or an instrument that does not have autonomy.⁶⁴¹ He explains that the customer is criminally liable if proven that the sex worker did not give valid consent to sell sex.⁶⁴² According to Gardner, those who argue that women do not consent to practise sex work [abolitionists] regard the customer as criminally liable as they objectify the subject.⁶⁴³

As explained in the previous chapter, the feminist approach influenced the human rights drafting of women's rights treaties and the national legal reform.⁶⁴⁴

1 *Legal Reform of Sex Work in Light of the Sex-Work Debate*

In this section, I review different approaches to sex work to understand the effect of various local policies, and the concept of morality and the media's part in choosing an approach to sex work. I have chosen to review several approaches, including the New South Wales' decriminalisation approach, the Swedish model of abolishing sex work, and the morality and parliamentary debate in Western Australia.

The reviewed practices below do not serve to answer the question as to the most appropriate approach; the review is to understand how different jurisdictions had different responses in light

⁶⁴⁰ Ibid.

⁶⁴¹ Gardner, above n 634.

⁶⁴² Ibid.

⁶⁴³ Ibid 18.

⁶⁴⁴ Halley et al, above n 380, 335.

of the international debate. Examples include how feminist thoughts and their context influenced the legal reform in the treatment of sex work. The section below discusses approaches to the trafficking of women. Several scholars, as explained in Chapter II, including Uçarer, Marinova and James, Strandberg and Wennerholm and Askola, have discussed sex trafficking as a matter of immigration (border control, morality (criminalising the sex seller), labour rights (regulating sex work), a health risk (sexually transmitted diseases), and the oppression of women (abolition).⁶⁴⁵

Countries, which ratified the *Trafficking Protocol* (2000), have different domestic laws on work/prostitution. For example, most of the USA States have chosen a prohibitionist approach through banning sex work.⁶⁴⁶ Further, the Netherlands and Germany have legalised sex work.⁶⁴⁷ New Zealand, however, has chosen to decriminalise sex work.⁶⁴⁸

In Sweden, the Swedish *Sex Purchase Act 1999* has taken the feminist, abolitionist approach to combating sex trafficking.⁶⁴⁹ After campaigning for criminalising prostitution in the early 1980s and 1990s, Sweden passed a law in 1998 that criminalised the purchase of sexual services.⁶⁵⁰ The Swedish *Sex Purchase Act 1999* entered into force on 1 January 1999 and states:

A person who, otherwise than as previously provided in this Chapter, obtains a casual sexual relation in return for payment, shall be sentenced for the purchase of sexual service to a fine

⁶⁴⁵ See Marinova and James, above n 367, 233; Uçarer, above n 375, 230-231; Strandberg and Wennerholm, above n 377; and Askola, above n 468.

⁶⁴⁶ Ine Vanwesenbeeck, 'Sex Work Criminalization In Barking Up the Wrong Tree' (2017) 46 *Arch Sex Behav* 1631.

⁶⁴⁷ *Ibid* 1632.

⁶⁴⁸ *Ibid*; Jess N Gibly, 'Safe Sex for Sale: Is Legalizing Sex Work the Answer to Sex Trafficking in the Netherlands?' (2012) 4 *International Journal of Undergraduate Research and Creative Activities*, Art 4.

⁶⁴⁹ *Sex Purchase Act 1999* Chapter VI § 11 Swedish Penal Code [Förbud Mot Köp Av Sexuell Tjänst 1999 Finns Numera I 6 Kap. 11 § Brottsbalken].

⁶⁵⁰ Max Waltman, 'Prohibiting Sex Purchasing and Ending Trafficking: The Swedish Prostitution Law' (2011) *Michigan Journal of International Law* 133-57.

or imprisonment for at most six months. The provision of the first paragraph also applies if the payment was promised or given by another person.⁶⁵¹

According to this law, any person who receives sexual services, regardless of whether the person pays money in return, or somebody else pays on his behalf for the sexual services, is criminally liable. Even the attempt to buy sex is criminalised under this law.⁶⁵²

To complement the *Sex Purchase Act 1999*, Sweden passed a human trafficking law in 2003 to criminalise the sexual exploitation of women and to deter pimps, brothel owners and any third party who profits from selling sex.⁶⁵³ This law was criticised because it did not reflect the aim of the *Sex Purchase Act 1999*, which banned the selling of sexual services.⁶⁵⁴ Swedish human trafficking law requires evidence that sex workers are forced to provide sexual services or proof of these women's vulnerable position, making them likely to submit to the will of the trafficker.⁶⁵⁵ Exploiting women to work in sexual services is known as the crime of procuring.⁶⁵⁶ The US federal TVPA law was criticised for a similar reason, as it would consider a person to be a victim of sex trafficking if the elements of deception, force or coercion were present. However, the difference between this law and the previous law is that the latter considers the sex worker as criminally liable in most of the States' laws in the US.⁶⁵⁷

⁶⁵¹ *Sex Purchase Act 1999* Chapter VI § 11 Swedish Penal Code [Förbud Mot Köp Av Sexuell Tjänst 1999 Finns Numera I 6 Kap. 11 § Brottsbalken] <https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/criminal_code_chapter_6_sweden_en_1.pdf>.

⁶⁵² Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of a Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings* (2004).

⁶⁵³ Susanne Dodillet and Petra Östergren, *The Swedish Sex Purchase Act: Claimed Success and Documented Effects* (2011); Yvonne Svanström, 'Prostitution Politics in Sweden: Debates and Policies 1980-2004' in Geetanjali Gangoli and Nicole Westmarland (eds), *International Approaches to Prostitution : Law and Policy in Europe and Asia* (Policy Press, 2006), 67.

⁶⁵⁴ See, eg, Dodillet and Östergren, above n 653.

⁶⁵⁵ Svanström, above n 653, 67.

⁶⁵⁶ Ibid; Dodillet and Östergren, above n 653.

⁶⁵⁷ Gerassi, above n 579, 591.

In New South Wales (NSW), brothels started operating legitimately after the enactment of the *Disorderly Houses Amendment Act 1995* (NSW) (DHAA).⁶⁵⁸ Under this legislation, regulation of the sex work business was left in the hands of local councils in accordance with the *Environmental Assessment and Protection Act 1979* (NSW).⁶⁵⁹ According to Crofts, NSW's regulation of sex focused on the regulation of the use of lands and premises instead of focusing on brothel owners and operators.⁶⁶⁰ The law focused on the 'potential impact instead of the potential operators'.⁶⁶¹ In her article, Crofts analysed the impact of passing a Bill that was promised by the elected government in NSW, which was concerned with regulating a Brothel Licensing Authority.⁶⁶² Crofts reported the aims of the NSW's Government, which revolved around dismantling illegal brothels and combating organised crime groups.⁶⁶³ The NSW arrangement of a licensing system aimed to decrease the illegality of brothels and the corruption that accompanied the illegal status of brothels.⁶⁶⁴

In its 1995 legislation, the New South Wales' Government chose the regime of decriminalising and keeping brothels. Thereafter, local councils were to regulate the keeping of brothels under the *Environmental Planning and Assessment Act of 1979* (NSW).⁶⁶⁵ This regime gave brothels the legitimacy to operate as a free choice industry.⁶⁶⁶ In her analysis, Crofts sought to prove the

⁶⁵⁸ Penny Crofts, 'The Proposed Licensing of Brothels in New South Wales' (2012) 17 *Local Government Law Journal* 3; *Disorderly Houses Amendment Act 1995* (NSW)

⁶⁵⁹ *Environmental Assessment and Protection Act 1979* (NSW)

⁶⁶⁰ Crofts, above n 658, 3.

⁶⁶¹ *Ibid.*

⁶⁶² *Ibid.*

⁶⁶³ *Ibid.*

⁶⁶⁴ *Ibid.*

⁶⁶⁵ Penny Crofts, 'A Decade of Licit Sex in the City' (2006) 12 *Local Government Law Journal* 5; *Environmental Assessment and Protection Act 1979* (NSW).

⁶⁶⁶ *Ibid.*

limited guidance offered by the government to the local councils on how to regulate brothels in the ten years of decriminalisation since 1995.⁶⁶⁷

Half of the NSW local councils had developed rules for regulating brothels, in particular regulations regarding the areas where brothels can operate.⁶⁶⁸ Crofts said that the councils' experience in regulating brothels was that NSW's system of regulation only focused on 'locational restrictions'.⁶⁶⁹ These councils did not make rules that differentiated between brothel types.⁶⁷⁰ The legislation that regulated brothels in NSW contradicted the intention of the legislature.⁶⁷¹ Section 17 of the DHAA provides details on the terms that give local councils grounds to request closure of brothels.⁶⁷² These grounds include amenity impacts, noise, disturbance and off-street parking.⁶⁷³ According to Crofts, the response of the local councils to the decriminalisation of prostitution regimes was mismanaged due to contradictions caused by morality on one side and decriminalisation on the other.⁶⁷⁴

The public health debate had an impact on the governance of prostitution in NSW.⁶⁷⁵ Hygienist and sanitationist governmental approaches were analysed by Scott who argued that their effect on certain legislation was to 'quarantine' or 'enforce' a 'regime of treatment for the body'.⁶⁷⁶ According to the sanitationist understanding, the government would act against persons within a population who may risk the public health of the population in an irresponsible manner. On the

⁶⁶⁷ Ibid.

⁶⁶⁸ Ibid.

⁶⁶⁹ Ibid.

⁶⁷⁰ Ibid.

⁶⁷¹ Ibid.

⁶⁷² *Disorderly Houses Amendment Act 1995* (NSW) s 17.

⁶⁷³ Crofts, above n 665, 5.

⁶⁷⁴ Ibid.

⁶⁷⁵ John Scott, 'Competition Paper: Prostitution and Public Health in New South Wales' (2003) 5(3) *Culture, Health & Sexuality* 277.

⁶⁷⁶ Ibid.

other hand, the hygienist approach pursued the empowerment of bodies that were considered at risk, through supplying protection, cure and rehabilitation. Public debate in countries like the United States (US), the United Kingdom (UK) and Australia has been interested primarily in sanitationist approaches for combating HIV/AIDS.⁶⁷⁷

Scott aimed at assessing the relation between prostitution and public health, and how public health concerns might develop classes of sex workers.⁶⁷⁸ Scott stated that:

The idea that prostitution is a public health problem, or the notion that prostitution can be divided into discrete categories and hierarchically ordered should be critically scrutinized so that the logic according to which prostitutes are currently governed might be recognized.⁶⁷⁹

In 1984, the New South Wales Transfusion Service considered adding prostitutes to the categories of 'high risk' populations.⁶⁸⁰ In 1984, a NSW newspaper announced its assumption that prostitution is the cause of the spread of AIDS.

Those in prostitute rights' organisations, and seeking to advocate the rights of prostitutes aimed at protecting the civil and human rights of the sex worker and involving them in HIV/AIDS awareness programs, have attempted to change the perception of prostitution.⁶⁸¹ Prostitution advocacy organisations sought to protect the rights of sex workers, in addition to describing prostitution as a choice of work. These organisations considered denying women's free choice to work as a sex worker would violate her civil and human rights.⁶⁸² According to Scott, this

⁶⁷⁷ Ibid.

⁶⁷⁸ John Scott, 'Prostitution and Public Health in New South Wales: Reply to Egger and Harcourt' (2004) 6(5) *Culture, Health & Sexuality* 447–53; John Scott, 'Competition Paper: Prostitution and Public Health in New South Wales' (2003) 5(3) *Culture, Health & Sexuality* 277.

⁶⁷⁹ John Scott, 'Prostitution and Public Health in New South Wales: Reply to Egger and Harcourt' (2004) 6(5) *Culture, Health & Sexuality* 447–53.

⁶⁸⁰ Ibid.

⁶⁸¹ Scott, above n 675.

⁶⁸² Ibid.

perspective aimed to challenge traditional perceptions of sex workers as social ‘misfit, sexual slaves, victims of drug addiction, and pimps’.⁶⁸³ The fact that prostitutes can be mothers with children did not calm the public debate.⁶⁸⁴ This perspective caused panic because prostitutes could live undetected in the community.⁶⁸⁵

Ronald Weitzer reviewed the debate of legalising prostitution in WA in an article that focused on the effect of the State’s ‘moral panic’ as interrelated with the rejection of several prostitution law reforms.⁶⁸⁶ Various discourses have entered the prostitution and trafficking debate in WA. The most common themes, according to Weitzer, are public nuisance, traditional morality, the oppression of women model and the sex work model.⁶⁸⁷ According to Weitzer, those holding a traditional moral approach viewed prostitution as evil and immoral. Further, those who held the oppression of women approach did not view prostitution as a shameful act or a ‘sin’; they viewed prostitution as inherently oppressive to both women and children. The oppression of women approach considered prostitution as increasing the subordination of sex-trafficked women; it considered all prostitutes as trafficked victims regardless of their consent to provide sex services. The third body of thought involves sex workers’ rights; in contrast with the oppression model, the sex workers rights approach did not consider all prostitutes as trafficked victims. According to the sex workers’ rights model, in deciding whether a prostitute is sex trafficked or is expressing her freedom of choice, the prostitute’s level of agency when she entered the sex industry and the working conditions should be two leading factors.⁶⁸⁸

⁶⁸³ Ibid.

⁶⁸⁴ Ibid.

⁶⁸⁵ Ibid.

⁶⁸⁶ Ronald Weitzer, ‘Legalizing Prostitution: Morality Politics in Western Australia’ (2009) 49(1) *The British Journal of Criminology* 88.

⁶⁸⁷ Ibid.

⁶⁸⁸ Ibid.

In the sex workers' rights model, sex trafficking is viewed as a result of forcing or deceiving migrant sex workers to enter the industry.⁶⁸⁹ The sex workers' rights approach called for providing government protection for sex workers. Nonetheless, the sex workers' rights approach advocated enacting laws that would provide labour rights for the sex workers to approach the ideal path for combating sex trafficking.⁶⁹⁰ Although brothels are illegal, the WA police allowed some brothels to operate. According to Weitzer, this legal-political approach encouraged police corruption, since it allowed them to demand sex in return for allowing the brothels to operate and not arresting prostitutes.⁶⁹¹

In light of worldwide practices, I have chosen to discuss the Tunisian legal reform. This is not included as a paradigm position, but as the only Arabic attempt to regulate sex work. In Tunisia, certain forms of prostitution, called 'public prostitution', have been legalised since 1942.⁶⁹² Post the rise of the Arab Spring, selling sex work was banned.⁶⁹³ Al-Riahi's working paper was the only comprehensive paper in English literature and Arabic literature found on the previous Tunisian regulation regime.

The Tunisian regulation situated brothels under systematic monitoring from the authorised health departments.⁶⁹⁴ The frequency of these health checks is on a weekly basis, in which the sex

⁶⁸⁹ Ibid.

⁶⁹⁰ Ibid.

⁶⁹¹ Ibid.

⁶⁹² Nada Al-Riahi, above n 260; *Tunisian Public Prostitution Ordinance 1942* (Secretary General of Tunisian Government, Tunisian Ministry of Interior).

⁶⁹³ *Tunisia: Rapists Given a Way out While Their Victims Are Blamed and Punished* (2015) Amnesty International <<https://www.amnesty.org/en/latest/news/2015/11/tunisia-rapists-given-a-way-out-while-their-victims-are-blamed-and-punished/>>; see *Trafficking in Persons Report* (State Department, 2017); Marine Olivesi, *Prostitutes Want Tunisia's Red Light Districts to Get Back in Business* (2014) PRI Public Radio International & GlobalPost <<https://www.pri.org/stories/2014-12-19/prostitutes-want-tunisias-red-light-districts-get-back-business>>; Aljoeidi, above n 442; Muhammad Alafifi Aljoeidi, *Brothel Labours' March Breaks the Social Silence in Tunisia* (2014) The Legal Agenda <<http://legal-agenda.com/article.php?id=2313>>

⁶⁹⁴ Al-Riahi, above n 260, 1–26

workers are obliged to visit the appointed public clinic.⁶⁹⁵ This regulatory law advocates for keeping sex workers away from the public, by limiting their ability to exit their premises.⁶⁹⁶ According to Carol Smart, legal discourse may construct the identity of females by dividing them into moral and immoral females and via the ‘sexed bodies’ approach informs legal rules for the benefit of the male.⁶⁹⁷ The Tunisian legal system legalises and regulates sex work; however, the law was a continuation of the discourse that stereotyped females and imposed legal and social stigma.

Following the recent parliamentary criminalisation of sex work in Tunisia, a number of international reports cited the Tunisian women’s movements-march against banning sex work and requesting the ‘red light districts to get back in business’.⁶⁹⁸ After the ban, red light districts were closed, except for two brothels in Tunisia. A report by Amnesty International cited the social stigma that sex workers face, including arrest and exploitation by the police. Also, they were facing sexual assault and prosecution by the criminal justice system.⁶⁹⁹

The previous policies show varying contexts for dealing with sex work as either a profession, an act of freedom or a crime that should be abolished. Various matters affect the adopted policy like considering sex workers as deviant, a health risk, lacking agency, or a population requiring police intervention and rescue. Other research focused on governance in isolation from feminist views of sex work; the governance of criminal and social justice between government agencies

⁶⁹⁵ Ibid.

⁶⁹⁶ See Ibid.

⁶⁹⁷ Smart, above n 175; Smart above n 342, 70.

⁶⁹⁸ Marine Olivesi, *Prostitutes Want Tunisia’s Red Light Districts to Get Back in Business* (2014) PRI Public Radio International & GlobalPost <<https://www.pri.org/stories/2014-12-19/prostitutes-want-tunisia-red-light-districts-get-back-business>>; Aljoeidi, above n 442.

⁶⁹⁹ *Tunisia: Rapists Given a Way out While Their Victims Are Blamed and Punished* (2015) Amnesty International <<https://www.amnesty.org/en/latest/news/2015/11/tunisia-rapists-given-a-way-out-while-their-victims-are-blamed-and-punished/>>; see US Department of State, *Trafficking in Persons Report* (State Department, 2017).

and NGOs is one point taken into consideration in the literature of this thesis. This point is discussed below.

B *Governing and Policing Sex Work and Domestic Violence in Light of Criminal and Social Justice Approaches*

Aside from the sex work debate, it is crucial to explain the criminal justice approaches to women's concerns in light of sex work and sex trafficking. According to Farrell and Cronin, whether the legal approach was legalisation or abolition of prostitution, law enforcement would be challenged to define a person as a victim or an offender of trafficking.⁷⁰⁰ Huisman and Kleemans demonstrated that combating sex trafficking in a system of legalisation of prostitution might become harder for the criminal justice system.⁷⁰¹

In consideration of the literature, I think that sex trafficking and sex work are two different terms but have a grey area between the two terms, this can be challenging in the application of justice practices. This becomes clearer after reading the findings in Chapter VI.

In the following, I refer to the governance of sex work and criminal justice treatment of sex workers, sex trafficked victims and women who confront gender-based violence. Several papers are presented in this section to discuss the collaboration, cooperation and interactions among government agencies and non-state actors (NGOs). As I understand from Halley et al, the governance of sex trafficking among state agencies and NGOs is influenced by feminist thought.⁷⁰² Karlsson's paper on institutionalism of anti-sex trafficking policy among government

⁷⁰⁰ Amy Farrell and Shea Cronin, 'Policing Prostitution in an Era of Human Trafficking Enforcement' (2015) 64 *Crime, Law Social Change* 211.

⁷⁰¹ Wim Huisman and Edward R. Kleemans, 'The Challenges of Fighting Sex Trafficking in the Legalized Prostitution Market of the Netherlands' (2014) 61 *Crime, Law and Social Change* 214.

⁷⁰² Halley et al, above n 380, 335.

agencies and interested NGOs underpins the idea that anti-sex trafficking institutions have a formation that was not intended.⁷⁰³ According to Karlsson, this formation is instituted in several instances, which dynamically structures the context and actors.⁷⁰⁴ Those influences have four strands: historical institutionalism, constructivist institutionalism, international institutionalism and domestic institutionalism.⁷⁰⁵

Karlsson also discussed anti-sex trafficking institutions. He explains the dynamically structured institutional formation that includes the laws and informal rules in the fight against sex trafficking,⁷⁰⁶ for protecting sex trafficked victims, detecting and preventing sex trafficking, and crisis management, consequence management, and response.⁷⁰⁷

1 *Administrating and mediating justice*

In her paper ‘Governing Prostitution’ in the UK, Phoenix demonstrated that the regulation of prostitution was formed in light of ‘above’ and ‘below’ governance. Above governance refers to the government’s criminal justice system and social services, which intervene in the lives of the women involved in prostitution.⁷⁰⁸ The ‘government from below’ refers to the volunteering social institutions that are separate from the government from above regarding ‘particularistic rationalities and modes of rule’.⁷⁰⁹ Phoenix analysed both the government from above and the ‘hybrid organizations’, finding they closely resemble the governance from below.⁷¹⁰ Stenson

⁷⁰³ Michael Karlsson, ‘Anti-Sex Trafficking Institutions’ (2013) 51(4) *International Migration* 74.

⁷⁰⁴ *Ibid* 79-80.

⁷⁰⁵ *Ibid* 80.

⁷⁰⁶ *Ibid* 75.

⁷⁰⁷ *Ibid* 75-79

⁷⁰⁸ Jo Phoenix, ‘Governing Prostitution: New Formations, Old Agendas’ (2007) 22(02) *Canadian Journal of Law and Society* 73, 75.

⁷⁰⁹ *Ibid*.

⁷¹⁰ *Ibid*.

argued that criminology should avoid depending on instruments that are ‘insensitive to local context’ and ‘state favoured’ in analysing contextual dilemmas of crime and safety.⁷¹¹ Phoenix demonstrated that hybrid organisations, which connote outreach projects that aim at servicing the sex workers and advocating for their rights, started to collaborate with the UK governance from above, including the criminal justice, in servicing female sex workers. The difference between both below and above governance became blurry, affecting the funding given by the above government to those hybrid organisations.⁷¹² This situation limited the effectiveness of the below governance and resulted in focusing on sex workers who appear in public only.⁷¹³

Medie explains how women’s movements advocating for the rights of women in Liberia regarding rape law after the transition to a democratic state, weakened.⁷¹⁴ She demonstrated how the women’s movement was absorbed by political parties that were in the government.⁷¹⁵ Medie alleged that this led to the weakening of those women’s movements that started functioning as ‘extensions of governments’.⁷¹⁶ This argument aligns with Phoenix’s analysis of the UK experience in governing sex work. The discussion of the powers of governments and the NGO women’s movements is essential for my thesis.⁷¹⁷

Phoenix pointed to the rise of governance from below in the early 1990s.⁷¹⁸ One outreach project provided health and social services for sex workers, regardless of sex work’s potential criminal

⁷¹¹ Stenson, above n 460, 280.

⁷¹² Phoenix, above n 708, 73.

⁷¹³ Ibid.

⁷¹⁴ Peace A Medie, ‘Fighting Gender-Based Violence: The Women’s Movement and the Enforcement of Rape Law in Liberia’ (2013) 112(448) *African Affairs* 377.

⁷¹⁵ Ibid; see further on women’s movements and their role in legal reform in Latin American countries Mala Htun, *Sex and the State: Abortion, Divorce, and the Family under Latin American Dictatorships and Democracies* (Cambridge University Press, 2003).

⁷¹⁶ Medie, above n 714.

⁷¹⁷ See chapter VII.

⁷¹⁸ Ibid.

status. Phoenix explained that this governance from below was reconfigured due to developing their relationships with the police regarding community concerns about prostitution. This relationship contributed to the development of governing prostitution from below.⁷¹⁹ The SAFE (Services for commercial sex workers) project in Birmingham started advocating for sex workers regarding their concerns for the health of sex workers who find themselves in exploitative conditions and the need to prosecute the exploiters. This belief of the need to prosecute and punish the exploiters of those sex workers led to the initiation of projects aimed at informing the police about exploiters of sex workers via ‘woman to woman’ talk that was ‘communicated to the police’.⁷²⁰

Phoenix explained that it became hard to distinguish the government above from the governance below due to the outreach projects becoming close to the government from above by collaborating with them and receiving funding from them. Karlsson’s paper on anti-sex trafficking institutions confirmed Phoenix’s point in explaining how the institutionalism of co-operation among government agencies and NGOs may result in making it hard for the police to assist.⁷²¹

Segrave et al explain how the collaboration among state agencies and NGOs would become a system of surveillance in which women would believe that they do not have a place without being subjected to legal action.⁷²² Medie draws on the social movements’ literature to explain

⁷¹⁹ Ibid 82.

⁷²⁰ Ibid 83.

⁷²¹ Karlsson, above n 703, 74.

⁷²² Marie Segrave et al, *Sex Trafficking: International Context and Response* (Taylor and Francis, 2nd ed, 2011) 78.

how it is vital to examine not only the effect of women's movements on policy making, but also movements' effect on implementing laws that protect the rights of women.⁷²³

2 *The stigma of identification as victim*

Several studies have pointed to the challenges of servicing the victims of trafficking due to victims' reluctance to identify themselves as victims.⁷²⁴ Crast pointed to her study in Hungary in which she explored NGO services in her bid to understand how to promote a victim-centred approach.⁷²⁵ She explains how one NGO, known as NANE, was limited in providing services for victims. For instance, they could not provide services to victims of trafficking other than counselling services, due to their abhorrence about contacting the authorities. Another NGO, which provides services as well as counselling, did not provide services for women and girls unless they identify themselves as victims of trafficking. Crast explains how women who use this NGO insist on not identifying themselves as victims.⁷²⁶ Crast stressed the idea that victims' refusal of identify themselves as victims contradicts the Trafficking Protocol's identification approach to protecting them.⁷²⁷

3 *Can sex trafficking be related to domestic violence?*

Several studies have pointed to domestic violence and sex trafficking from similarity, intersection, and cause and effect perspectives.⁷²⁸ For instance, Warnath studied the intersection

⁷²³ Medie, above n 813; see, eg, on social movements and what makes them matter in policy decision-making Edwin Amenta et al, 'The Political Consequences of Social Movements' (2010) 36 *Annual Review of Sociology* 287.

⁷²⁴ Segrave et al, above n 722, 14–15.

⁷²⁵ Jeanette M Crast, *Promoting a Victim Centeerd Approach to Combating Human Trafficking and Commercial Sexual Exploitation* (MA Thesis, Central European University, 2010).

⁷²⁶ Ibid.

⁷²⁷ Ibid.

⁷²⁸ See Walsh, above n 496, 221.; see also Warnath's analysis of cause-effect in the intersection of trafficking and domestic violence: Stephen Warnath, *Examining the Intersection between Trafficking and Domestic Violence* (Creative Associates International, Inc. and Aguirre Division of JBS International, Inc., 2007); see also

between trafficking and domestic abuse regarding whether domestic violence victims are susceptible to trafficking.⁷²⁹ However, his study shows that the majority of assisted victims of trafficking in the studied countries did not have a background of domestic violence.

In her discussion on criminal justice intervention to sex trafficking, Walsh explained the intersections of domestic violence, sex trafficking and prostitution.⁷³⁰ She applauded the application of the Minnesota city of Duluth's 'victim-centred approach', which is used for domestic violence survivors and sex trafficked females.⁷³¹

Walsh built her argument of similarity between domestic violence and sex trafficking in centring her arguments on the three tactics, 'intimidation, isolation and control',⁷³² used against domestic violence victims, which were introduced in Stark's work on 'coercive control'.⁷³³ One of the similarities between domestic violence and sex trafficking found by Walsh was 'coercive tactics to exert control', which include isolation, the use of threats to take away a child and other threats.⁷³⁴ Sometimes the trafficking offender might have an intimate relationship with the trafficked victim to exercise control, which also appears in domestic violence cases. Also, both domestic violence and trafficking victims tend not to identify themselves as victims. Another similarity raised by Walsh is that service providers falsely tend to 'identify victims as choosing their victimisation'.⁷³⁵ Walsh elaborated on how both types of victim are sometimes blamed for

Maite Verhoeven, et al, 'Relationships between Suspects and Victims of Sex Trafficking. Exploitation of Prostitutes and Domestic Violence Parallels in Dutch Trafficking Cases' (2013) 21(1) *European Journal on Criminal Policy and Research* 49.

⁷²⁹ Warnath, above n 728.

⁷³⁰ Walsh, above n 496, 225.

⁷³¹ Ibid 230.

⁷³² Ibid 225.

⁷³³ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life*, Interpersonal Violence; (Oxford University Press, USA, 2007).

⁷³⁴ Walsh, above n 496, 226.

⁷³⁵ Ibid 229.

staying or choosing their offenders. Sex workers who prefer not to be rescued from violence and coercion imposed by their pimps or Johns are denied access to needed services and amenities.⁷³⁶

Walsh elaborated that conceptualising the dynamics of coercion and abuse to identify victims of sex trafficking accurately would aid criminal justice approaches, but would mistakenly identify women who choose prostitution as victims of sex trafficking.⁷³⁷ Walsh details the same tactics used by offenders of both domestic abuse and sex trafficking victims. Walsh explained that:

Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threat of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.⁷³⁸

One of the approaches that Walsh considers to be successful in the Duluth victim-centred approach, which should be used for sex trafficked victims, is the need to inform women that it is not their fault for what happened to them. The need for service providers and police to understand victims' trauma and stress were found to be crucial for both types of victims.⁷³⁹ The importance of increasing 'gender sensitivity across the population' and the police can decrease the stigma surrounding the trafficked victim.⁷⁴⁰

Walsh described coordination among different actors in the criminal and social justice systems as one of the most successful approaches adopted for trafficking victims too. She pointed to how women's movements cooperated with each other, the courts, the police and other government agencies.⁷⁴¹

⁷³⁶ Ibid.

⁷³⁷ Ibid 223.

⁷³⁸ Ibid 225.

⁷³⁹ Ibid.

⁷⁴⁰ Ibid.

⁷⁴¹ Ibid 240.

Another paper that studied the parallels between sex trafficking and domestic violence argued that sex trafficking is a crime that could be described as a crime of relational context, as with domestic violence cases.⁷⁴² Verhoeven et al explain how some of the sex trafficked victims develop a relationship with their traffickers, which makes their situation similar to domestic violence victims.⁷⁴³ In their contribution, Verhoeven et al have shown how understanding the relationships between the trafficker and the victim of sex trafficking and comparing it with parallels in domestic violence victims may help in understanding sex trafficking.⁷⁴⁴

From the above discussion, I understand that the governance of sex trafficking could hold dilemmas due related to the sex work\ sex trafficking confusion. A clear distinction among the two scenarios or doing the opposite by considering both to be the same can be troubling for the governance of social and criminal justice for women involved in sex work, sex trafficking or gender-based violence, and the access to it.

A *Revisiting the sex work and sex trafficking debate*

In her analysis of sex trafficking and domestic violence service provision in Duluth, Walsh did not overlook the sex work debate and its relation to her paper. As explained above, she emphasised the need to understand the difference between a trafficked victim and a person who chooses prostitution to provide services for the person who is confronting coercion, fraud or force, as stipulated in the *US Trafficking Victim Protection Act*.⁷⁴⁵ However, she admits that it can be hard to identify and prove those elements of force, fraud or coercion. Therefore, she

⁷⁴² Verhoeven, et al, above n 728, 49.

⁷⁴³ Ibid.

⁷⁴⁴ Ibid.

⁷⁴⁵ *Trafficking Victims Protection Act*, 22USC § 7102(9)(a).

agreed with Brysk that ‘not all sex work is forced and not all people in prostitution are trafficked’.⁷⁴⁶ Building on this, Walsh and Vanwesenbeeck argued for non-criminalisation of sex workers and the need to provide them with services, in addition to the choice of exiting sex work if they wanted to.⁷⁴⁷

B *Summary*

I found Walsh’s paper helpful in rounding out the review of the sex work debate and several context experiences in abolition, legalisation and decriminalisation of sex work to understand the responses for legal reforms. I reviewed the above literature on those jurisdictions to understand the dilemmas they faced in light of morality, cultural context, the political parties’ responses to reform, and the use of specific language in the regulating or criminalising statutes.

Governing and policing sex work and sex trafficking in a social and criminal justice framework can be influenced by feminist thoughts and local interactions and practices, in addition to historical formations. Looking through the dynamics of settling for a regime or a practice to tackle sex trafficking and sex work needs exploration without ignoring the contextual circumstances.

I argue that a theoretical framework must capture the complicated and dynamic sources of oppression in Jordan. Therefore, the previously mentioned practices, whether in Tunisia, Australia, Sweden or elsewhere, are paradigm positions and a part of sampling practices for the discussion chapter. In this research, I do not promote a particular practice as an appropriate one,

⁷⁴⁶ Walsh, above n 496; see also Alison Brysk, ‘Sex as Slavery? Understanding Private Wrongs’ (2011) 12(3) 259, 264.

⁷⁴⁷ Walsh, above n 496; see also Vanwesenbeeck, above n 646, 1631.

as it would conflict with my anti-categorical intersectional theoretical framework. Choosing a certain practice among the those reviewed in the literature should not be adopted as a solution in this thesis. However, I shall consider the literature in this chapter as a persuasive authority.

In the following, I introduce the laws of the Jordanian Penal Code on sexual crimes to analyse it using discourse and sexed body approaches. Then I introduce the findings Chapters VI and VII using intersectionality framework and CDA.

VI LEGAL DISCOURSES ON FEMALE VICTIMS AND OFFENDERS IN

JORDAN: A KIND OF DOUBLE JEOPARDY

In this chapter, I explore one of the main triangular influences on the discourse on sex trafficking and sex work in Jordan, which is the legal text in the Jordanian Penal Code (JPC) regarding sexual crimes. In an androcentric culture, text can play part in ruling the ideology for the advantage of masculinity.⁷⁴⁸ Legal text have a powerful position in ruling this ideology.⁷⁴⁹ I consider the influence of the text of honour crimes, other related sexual crimes and the incrimination of certain conducts in sex work on the discourse on sex trafficking and sex work in Jordan.

A Introduction

I recall my experience of studying criminal law as a female law student in Palestine. Any discussion of the crimes of honour, as we labelled them, was a topic that we females had to stay silent on in class discussions because these matters were considered cultural taboos. As females wanting to preserve our honour, or in other words our honourable image in front of male colleagues, we did not discuss such matters in detail. However, to pass the criminal law unit's in-class discussion, we needed to understand the meaning of *mens rea* (guilty mind) constituted in

⁷⁴⁸ Dorothy Smith, above n 357, 17.

⁷⁴⁹ See Smart, above n 175; see also Bamfield, above n 347.

the crime of breach of honour. How could a court of law prove that the perpetrator had the intention of breaching the honour of a person? What does a breach of honour mean?

Nicolson acknowledged that feminists have been researching criminology for the last 30 years of the 20th century,⁷⁵⁰ but penal codes still reflected gender differences in 2000 when he wrote his book. In this chapter, I explore the gender biased Jordanian Penal Code (JPC),⁷⁵¹ which is still in effect 17 years after Nicolson's publication. In 1960, the Jordanian parliament passed the JPC, which is influenced by cultural, religious and traditional norms. In addition, is it influenced by the Ottoman Majalleh, tribal and social traditions and Sharia' law?⁷⁵²

The JPC has a language that divides women into decent and indecent classes, despite many advances in reducing gender differences. The language is somewhat gender neutral, though men are referred to as perpetrators of these crimes.

The criminal law and culpability positions in Arabic literature on civil law systems of the Middle East, including Jordan, are concerned with two sets of crimes: financial crimes and crimes against persons. Crimes against persons include the study of crimes of honour, known as sex and honour crimes. After re-reading the JPC, I believe that some of the crimes of honour and crimes against the familial order do not fall into the framework of crimes against an individual person. The JPC considers the victim as a sexual object. The law regards some of those crimes as committed against the familial order and the family or against *honour* –honour is part of the

⁷⁵⁰ Nicolson, above n 340.

⁷⁵¹ 'Qanun Al Oqubat Al Ordoni' [Jordanian Penal Code No.(12) 1960, amended on 2011].

⁷⁵² Zuhur, above n 234, 18.

familial and cultural norms of Middle Eastern countries and the concept will be considered later in this chapter.

The present JPC reflects the language of, and is justified by, Jordanian culture and practices, which represent the interests of the patriarchal and familial order. For instance, the Ottoman Majalleh, which was the source of civil and criminal laws in the nineteenth and twentieth centuries, is, to a certain extent, still standing behind the legal discourse and language used in most Middle Eastern countries, including in Jordan.⁷⁵³ Zuhur reported the influence of familial norms and religious scripts on the penal codes of the Middle East.⁷⁵⁴ In 2011, an amendment to the JPC was made to make the penalties harsher, in addition to repealing some exemptions. For instance, Article 340 of the JPC included an exemption of punishment for the husband who kills his wife and her lover if they were found having sexual relations. However, this article was repealed after it was condemned by women rights' movements in Jordan.⁷⁵⁵ The killing is called killing on the basis of honour, also known as the crimes of passion or crimes of anger.⁷⁵⁶

In the interview with [Dalal](#), who is a native Jordanian Bedouin, I was puzzled as to why she was focusing on honour-based crimes instead of focusing on sex trafficking or sexual exploitation. During the interview, she discussed the JPC regarding sex crimes and crimes involving family-norms. This section of the JPC focuses on crimes committed involving sexual activity including

⁷⁵³ See Daniah Kheetan, 'Rape laws in the Middle East: Legal Changes are Imperative, but they are at Least as Important as Social Ones' (2017) 118 *The Gazelle*. < <https://www.thegazelle.org/issue/118/opinion/middle-east-column>>; Lee Epstein et al 'Middle East' in Allan A Katz (eds) *Legal Traditions and Systems: An International Handbook* (Greenwood Press, 1986) 219; Zuhur, above n 234, 17.

⁷⁵⁴ Zuhur, above n 234, 17.

⁷⁵⁵ *Ibid*.

⁷⁵⁶ *Ibid*; see also Anthias, above n 29, 163.

adultery, breach of honour, rape and the abduction of a person and other crimes that breach the morality of the Jordanian society (familial order).

The interview with [Dalal](#) was unique because she was the only female native Jordanian among the participants. She described to me the historical traditions of the native Jordanians and how the culture changed after modernisation. She told me how she saw the connections between different elements and sources of subordination, which affect girls and women in Jordan and their choices as to whether to stay silent or not about the breach of their honour. Also, she pointed out to me gaps in the JPC, relating to them as part of the problem of sex trafficking.

Consequently, I re-read the JPC, in particular, the articles concerning sex crimes, honour crimes, and crimes of sex work pimping and brothel management. Reading the law with a feminist lens focussing on the 'sexed body' contributes to the understanding of this law as a powerful discourse, which is part of 'phallogocentric cultural practices'.⁷⁵⁷ In my analysis, I show that the JPC is phallogocentric law, which influences and is a reflection of the discourse on power relations that affect the status of sex trafficked females and sex workers in the society. Also, the JPC language contributes in making women who are in certain intersecting circumstances more vulnerable than previously to sex trafficking or exploitation of their sex work. In addition, it affects women's level of willingness to access protections, shelters and services.

In the JPC, seven groups of crimes are regulated as part of crimes against the sexuality and crimes affecting the status of the family norms. These are crimes against family norms and morals; crimes against honour; breach of honour; abduction (kidnap); seduction; sex work related crimes and brothel management; and the crime of abortion. I only analyse the crimes

⁷⁵⁷ Smart, above n 342, 70.

related to breach of honour, and sex work related crimes. These crimes are in [section VII, Chapters 2 and 3 of the JPC](#). However, the circumstances that exempt sex offenders from punishment are also analysed. This approach is required to understand the reason for prohibiting specific practices of sexual behaviours, and the use of old phrases in describing prohibited sexual conducts. I have also analysed articles in the JPC that criminalise conduct referred to as a breach of honour.

In the chosen articles for interpretation, I refer to the analysis pointed to by Carol Smart who considered legal practices and the law as an influence for stereotyping the biological woman and the feminine woman. Smart's 'sexed bodies' analysis as it applies to the JPC promoted the understanding of the power of law in reinforcing cultural practices and influences on sex trafficked victims and sex workers. The binary oppositions that are constituted in the Jordanian society influenced how sex trafficked victims and exploited sex workers are treated. This analysis and the other two analyses in Chapters VI and VII have aided in drawing explanations of the three influences (sources of interactions) that contribute to social and legal stigma for exploited sex workers and sex trafficked victims who may prefer not to exit the underground industry.

In the following, I have analysed parts of the sixth and seventh sections of the JPC. For the sake of explaining how the culture is phallogentric, I have selected articles that reinforce the construction of the identity of women and reinforce gendered roles for both women and men. I discuss the crimes considered in the JPC to harm morality and public decency of the androcentric culture.⁷⁵⁸

⁷⁵⁸ Smart, above n 175, 26–32.

B Crimes that Breach Morality and Public Decency

The criminalised conducts analysed in this section are considered to breach morality and public decency, in both public and private spheres. Honour is one of the protected values in the JPC. Likewise, in most of the Arab world, violating honour can have legal consequences. Terms like honour in the JPC should be explored to understand the ideology behind it.

According to Zuhur, the word honour can be translated into Arabic to mean two words: ‘*sharaf*’ and ‘*ardh*’.⁷⁵⁹ I agree in part with the explanation Zuhur gives, having re-read, re-evaluated and re-defined the term ‘honour’.⁷⁶⁰ The words *sharaf* and *ardh* have similar meanings for honour in both Jordanian and Palestinian cultures, which share some common history. Zuhur demonstrated that people living near the Mediterranean, including Arabs, adopted customs and a set of meanings called ‘honour’. ‘Honour’ cements an individual’s belonging to their family or tribe. In explaining honour, Zuhur argued that *sharaf* reflects the reputation and the generosity of males, associated with their socioeconomic status and power position.⁷⁶¹ In other words, it represents the male’s prestigious position in the tribe, family or town.

Zuhur alleged that *ardh* relates to women’s chastity and sexual virtue.⁷⁶² She explained that if a female lost her virginity outside marriage, the family or tribe would lose its honour. Furthermore, if a woman gives birth to a child outside marriage that would be a violation of honour.

Ardh and *sharaf* are two words that accompany each other. The breach of one of them would ultimately mean the loss of the other. I agree with Zuhur that *sharaf* relates to a person’s

⁷⁵⁹ Zuhur, above n 234.

⁷⁶⁰ Ibid.

⁷⁶¹ Ibid.

⁷⁶² Ibid.

reputation and power position. However, the assumption that *sharaf* is a virtue that refers only to manhood is questionable. Such an evaluation suggests the construction of biased gender roles, positions and differences. The language used may strengthen gender differences to the detriment of females. Excluding females does not reflect the real meaning of the word *sharaf*. In the Jordanian language, a man who has *sharaf* is called *sharif*, whereas a woman in the Arabic language is called *sharifa* if she possesses the virtue of *sharaf*.

Sharaf is a prerequisite for the individual or the collective to survive in a society where prestige is a prerequisite for a powerful position in the town, city, tribe or a family. Radiya, one of the research participants, used the word '*sharafha*' (meaning her *sharaf*) in answer to my question about what contributes to a woman's vulnerability sufficient for her to become a victim of sex trafficking. Her use of the word *sharafha* supports my proposition that *sharaf* does not necessarily relate only to men. Power positions in society involve a complex set of several elements that have different meanings in different contexts.

The word *ardh* refers to the material and physical elements of sexual rights and belonging. According to the Arab language and dictionaries, the word *ardh* refers to what can be applauded or criticised about a human, their body, or people who are under a man's authority. The other translation of the word *ardh* in the dictionary is '*hassab*', which refers to the family or tribe of the man who has the reputation of being honourable for a long time. It also refers to the numbers of a family/tribe members (including male successors) who have a certain amount of power and reputable *sharaf*. A man who has *hassab* means his family has a sound social or economic position in a town, village or city.

The *ardh* is the material element that represents the sexual rights or possession of those rights, which belong to the male, including the sexual experience of his female kin or wife. A person who wants to protect his *sharaf* will protect his *ardh*, which includes women who are under his authority such as his wife, mother, sister or daughter.

When a woman is accused of losing her honour, she is accused of losing her *sharaf* as a virtue. It is not common to say in Arabic that a woman lost her *ardh*. *Ardh* refers to an embodied experience, for instance, losing her virginity is a breach, but not a loss of *ardh*.

In the JPC, the crimes mentioned below refer to conduct that harms, violates or breaches the *ardh* of the collectives. This reading of the words *ardh* and *sharaf* supports my argument that *ardh* refers to the physical element of the word honour in English language. However, *ardh* does not necessarily apply to the ‘material’ rights of females and males. Instead, it refers to the cultural conditions that informed the JPC in referring to the breach of *ardh* as belonging to the collective’s family rights.

Crimes against the ardh (honour)

I begin with the socio-legal discourse on ‘crimes against the *ardh*’⁷⁶³; these crimes include rape, sexual intercourse with the girl-child, incest, abduction and seduction.⁷⁶⁴

⁷⁶³ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011].

⁷⁶⁴ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011].

The crime of rape: the exclusion of the wife from victimisation

[Article 292.1](#) states that ‘whoever has sexual intercourse with a female other than his wife- against her will by the use of force or threats or trick or deception, shall be punished’.⁷⁶⁵

According to this article, a perpetrator is criminalised if the victim is not the perpetrator’s wife. However, excluding the wife from the scope of protection is stigmatising for the wife. Some families are still conservative and prefer a traditional marriage where the future husband does not meet or have intimacy with his future wife before marriage. This suggests that if a virgin refuses to have sex on the wedding night, the husband is entitled to compel her to have sexual intercourse.

According to cultural rules that are patriarchal, the wife cannot disobey her husband or a male in authority. If he rapes her, the wife has no protection from the law or cultural norms. Often women would be too shy to complain. This situation puts women in a position where the husband should be obeyed regardless of the circumstances. Of course, not all men rape their wives; that would be a wrong conclusion. However, the language in article 292 supports the position that the wife is to obey the husband regardless of what he commands. If a husband intends to exploit his wife, including forcing, deceiving or convincing her to have sex with clients, the wife might think that she is required to obey the husband.

This reminds me of what Dalal said, that the wife believes that she has to preserve the family, including her husband and children, to survive. According to Dalal, women are told: ‘you don’t have anything in this life to survive on but your husband, household, and sons’. This position

⁷⁶⁵ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 292(1)].

reflects gendered power relations. A woman who is vulnerable might be sexually exploited by her husband and be doubly judged by society and the law.

Dalal describes how women are instructed by the society to obey males. The JPC reinforces and strengthens the social construction of female and male differences. Not only does the social and cultural imperative construct the law, the law reinforces the construction of gender roles.

Exploiting Jordanian women's vulnerable status

[Article 293](#): 'whoever has sexual intercourse with a woman, other than his wife, who could not resist because of a physical or emotional or mental limitation, he shall be punished ...'⁷⁶⁶

This article implies a similar question to the previous one: is it legitimate for the wife to be raped if she was physically or mentally disabled? I searched Sharia law and could not see any rule allowing the man to have sex without the consent of the wife. However, under Sharia law, a woman is obliged to obey her husband. This draws me back to Dalal's phrase, which confirms stereotyped gendered roles: 'you don't have anything in this life to survive on but your husband, household and sons' (*ma elek elak jozek w beiek w wladek*). This idea that a woman must safeguard her husband, her only source of survival, is likely to result in her making personal sacrifices. Safeguarding the male and masculinity is essential for maintaining positions of power in the familial system for a woman, her husband and her sons. Therefore, a women's autonomy is violated, is 'collateral damage', but this situation is necessary for females' survival.

The rationale behind this behaviour can be understood as cultural. However, should the law mimic culturally constructed conceptions of women as to how they should act? The law should

⁷⁶⁶ 'Qanun Al Oqoubat Al Ordoni' [Jordanian Penal Code No.(12) 1960, amended on 2011, art 293].

aid those individuals disadvantaged by these cultural norms and traditions, rather than support structures that strengthen social stigma. Therefore, excluding the husband from criminal liability reinforces gender differences, especially as legal discourse is a powerful discourse that makes truth claims, as Smart explains.⁷⁶⁷

Other than excluding the wife from victimisation, article 293 states that any person who has sexual intercourse with a woman who could not resist due to physical, emotional or mental limitation will face a penalty of ten years' imprisonment with hard labour.⁷⁶⁸ This regulation needs to be extended to include the scope of scenarios where a woman cannot resist due to fear of losing honour, or neutrally referred to as vulnerable. If a female did not resist because she feared exposure, then she should be seen as vulnerable. However, the language used in the law differentiates between decent and indecent women. Stereotypes are reinforced. A neutral term that is equivalent to honour may encourage women to seek justice.

Sexual intercourse with the girl-child

[Article 294](#): 'whoever has sexual intercourse with a female, other than his wife, who reached fifteen years of age and under eighteen years, he shall be punished ...'.⁷⁶⁹

This article exempts the husband who has sexual intercourse with his girl-child wife from criminal liability. It is also noncommittal regarding a husband having sexual intercourse with the girl-child wife and using force. A valid marriage contract between the alleged offender and the female victim exempts him from criminal liability. According to Mohammed, the only male research participant, when I asked him about girl-child marriages among Syrian refugees and

⁷⁶⁷ Carol Smart, above n 342.

⁷⁶⁸ 'Qanun Al Oqoubat Al Ordoni' [Jordanian Penal Code No.(12) 1960, amended on 2011, art 293].

⁷⁶⁹ 'Qanun Al Oqoubat Al Ordoni' [Jordanian Penal Code No.(12) 1960, amended on 2011, art 294].

immigrants, he explained that girl-child marriages are a custom brought to Jordan by Syrians who come from the rural areas in Syria. The vulnerable status of refugees in Jordan and the patriarchal customs of Jordan intersect as sources of subordination, creating the context conducive for sex trafficking of Syrian girl-children.

Domestic sexual child abuse

[Article 295](#)(1) criminalises the act of ‘sexual intercourse with a female who reached fifteen years of age and still under eighteen years, and the perpetrator is one of her legitimate or illegitimate descendants or ancestors; or she was assaulted by one of her blood relatives or any other person who is entrusted to take care of her and has a legal authority over such girl, he shall be punished ...’.⁷⁷⁰

According to Dalal, there are cases where a female who is underage is raped by her father or brother, or by her kin who is exercising his legal authority as a foster parent. I understand the importance of this article, but does it deter any offenders? According to the participants, most likely it does not. Consequently, the laws that govern the fostering of a girl-child need amending. The government needs to impose certain obligations upon the fostering parent or kin to protect the orphan girl-child. If the foster parent is not taking good care of the girl-child, the girl should be taken from his custody.

Article 295(2): ‘the same penalty shall be applicable if the perpetrator is a clergyman or the director of an employment office or an employee in such office and committed the act in an abuse of his power or the facilitation he gets from such power.’⁷⁷¹

⁷⁷⁰ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 295(1)].

⁷⁷¹ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 295(2)].

Jordanian laws impose harsher penalties on offenders of a certain status, such as governmental staff. Jordan has been the safe harbour for refugees for a long time; however, the refugee status of a victim renders them vulnerable. However, a victim's vulnerable status has not been taken into consideration in the JPC in making penalties harsher on perpetrators.

*Is *hatk al 'ardh* a breach of honour? Or is it just simply sexual harassment?*

[Article 296](#) (1): 'whoever commits (the breach of the honour) upon a person against his\her will by the use of force or threats shall be punished by imprisonment for a period not less than four years.'⁷⁷²

This article refers to the crime called a breach of honour. This article does not refer to the sex of the victim. The title of the crime if translated into English is a 'breach of honour' for acts that are dishonouring to the person affected by the act. It is not too fanciful to suggest a 'breach of honour' is equivalent to 'sexual harassment' or 'sexual abuse'; the only difference between both phrases is that the first one relies on language that implicitly informs the victim that the acts committed against her were shameful and dishonouring. However, a re-reading and re-evaluation of the word '*hatk ardh*' is required. The word *hatk ardh* is the violation of the physical elements of bodily experiences that are owned by the person and their male relative or husband, which results in the loss of *sharaf*. It is worth repeating that *hatk al ardh* refers to the violation of the *ardh*, which is a collective right that belongs to the female victim, her male kin, her husband and her family or tribe.

The language of these laws requires women to think twice before raising a complaint against the offender to the police. The use of this language in the courts has negative connotations. No

⁷⁷² '*Qanun Al Oqoubat Al Ordoni*' [Jordanian Penal Code No.(12) 1960, amended on 2011, art 296(1)].

victim would like her *ardh* breached. In particular, no Arab woman who lives in Jordan would like to be the centre of gossip in society. Therefore, she would prefer to stay silent than be referred to as ‘the lady whose *ardh* was breached’. She would not retain any prestige with this stigmatising label. The phrase *hatk al ardh*, which is influenced by her cultural background, would double her experience of the stigma. Neutral language in the law could gradually erase the stigma for the victims of sexual abuse or sex trafficking. Women, in Jordan, who are victims of sexual crimes could get stigmatised due to the fact that their ‘honour’ is breached. Since honour is socially constructed to be a significant value for Middle Eastern Arab-women in Jordan, the breach of their honour as victims could render them as marginalised and/or stigmatised then to become an easy option for perpetrators to recruit them via means of threat or intimidation to become sex worker.

[Article 296\(2\)](#): ‘the minimum limit of the penalty shall be seven years if the victim did not reach fifteen years of age.’⁷⁷³

The language of the law is even more critical when the person is underage. If a girl-child thinks that she is a victim of the crime of breach of honour, she would refrain from telling her family because she would be afraid. The language used doubles the stigma as sources of female subordination intersect: age, social status and race.

How then should a breach of honour be defined? The society constitutes discourse on binary and opposing terms including honourable/dishonourable and respectful/shameful.⁷⁷⁴ The victim might face this classification by the ruling judge, the defence lawyer, the prosecutor, the

⁷⁷³ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 296(2)].

⁷⁷⁴ See Smart, above n 175, 33.

perpetrator in cross examination or by the society, regardless of whether she was the victim or not; or whether it was against her will or with her consent. Nicolson pointed out that feminists criticised the attitudes of the criminal justice system's members including prosecutors, judges and police for upholding upheld myths and stereotypes about females and males and their sexuality, and what constitutes coerced sexual activity.⁷⁷⁵

In a case described by Dalal, which was heard in the Jordanian Magistrate Criminal Court, a woman raised a claim against a man who committed a breach of honour against her in a bus. The man put his hand on her waist line. After getting off the bus, she went to the police station and placed a complaint against the man, saying that he placed his hand on her waist without her consent. In the court, the perpetrator asked her in the cross examination: 'I had my hand on your waist for 20 minutes, why didn't you complain before all this time?'. It is likely that she feared a breaching of *ardh* in the eyes of the people in the bus. Dalal explained how the woman should not have stayed silent, as during the interview she was challenging the weakness that women have in her society. This case was not an example of the attitude of the criminal justice, but it shows how the woman's silence was interpreted as proof of her consent by the perpetrator and Dalal, who is a lawyer and service provider.

[Article 297](#): 'whoever [breaches the honour of a person] who is incapable of resisting due to physical or mental impediment or through the use of deception; or compels such a person to commit a breach of honour, he/she shall be punished with temporary imprisonment with hard labour.'⁷⁷⁶

⁷⁷⁵ Nicolson, above n 340, 1–26.

⁷⁷⁶ 'Qanun Al Oqoubat Al Ordoni' [Jordanian Penal Code No.(12) 1960, amended on 2011, art 297].

If a woman is in a weakened state and experienced a ‘breach of honour’, she would prefer not to raise any claim against the offender because it might compound her already vulnerable status and position.

[Article 298\(1\)](#): ‘whoever commits a breach of honour act without the use of force or threat against a person, male or female, who did not reach fifteen years of age, or compels such a person to commit the breach of honour, he/she shall be punished ...’⁷⁷⁷

In this penal code, any individual who ‘commits a breach of honour act without the use of force or threat against a person’ who is under the age of fifteen’ is incriminated regardless of the consent of the child. In this part, the action element is fulfilled if the perpetrator commits a breach of honour against the child.

In the second part of the article, the action element relates to compelling ‘such person to commit’ breach of honour. Compelling suggests the use of force; the action element is fulfilled by the victim. The *actus reus* is fulfilled if the victim commits the breach of honour themselves.

As explained in the previous two paragraphs, article 298 has two different *actus reus*, which refer either to the actions of the perpetrators or the actions of the victim due to the use of force. The first action, which is committed by the perpetrator regardless of consent refers to the sexual harassment of a child.

In the second part (compelling a person to commit a breach of honour), the *actus reus* does not refer to the sexual harassment of the child; it considers the breach of honour to have been violated using the child as a tool of breaching the honour. In other words, the child is to be

⁷⁷⁷ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 298].

compelled by the perpetrator to conduct the act, with the perpetrator or any other person. This law perceives the victim as an object used for the breach of honour. The dualistic meaning of the phrase, a breach of honour, refers to cultural norms. Honour is seen as a collective value, which does not necessary reflect the discontent or the experience of the female victim.

The JPC did not separate the two types of conduct (*actus reus*), though they differ from each other. The first type refers to the crime of sexual harassment; whereas, the second one refers to crimes of sexual exploitation for sexual pleasure or profit. For the second type, the victim is ‘compelled’ by the perpetrator to perform sexual activities with him or third parties. This use of language, which hints that the victim conducts herself indecently, is stigmatising for the victim. This harsh legal language would impede the victim from complaining or if she complains she is likely to withdraw the complaint. The language implies that the victim did immoral acts that breach the moral standards of the society.

Seduction

[Article 304\(1\)](#): ‘whoever seduces a virgin over fifteen years of age with the promise of marriage and made her lose her virginity shall be punished ...’⁷⁷⁸

This article is a gender specific article related to a woman’s loss of virginity after being deceived by the perpetrator. The act of deception involves the promise of marriage. This article relates to

⁷⁷⁸ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 304(1)].

the fact that Arab women could be deceived into having sexual intercourse, which would result in her losing her cultural position. This article is important for the sake of protecting women from deception, which may cause her to lose her virginity and subsequently be socially marginalised.

[Article 304\(2\)](#): “the following elements constitute admissible evidence against the accused: ‘the evidence applicable in the case of seduction through the promise of marriage is the confession of the accused before the investigating judge or the court or the existence of letters and other relevant written documentation.’⁷⁷⁹ This article reinforces gender differences between the male and female. Limiting evidence, which could be valid for the case, to a ‘confession of the accused before the investigating judge’ or letters or written documentation, is discriminatory. That is, requiring written evidence to prosecute the accused male perpetrator is a burden on the female victim.⁷⁸⁰

[Article 304\(3\)](#): ‘any person who incites a woman, whether married or not, to leave her residence [to follow] [a man not related to her], or attempts to corrupt the said woman from her husband to break the marriage bond’, shall be punished....’⁷⁸¹

The aim of this article is clear, when accompanied with the explanation of ‘*khattf*’. This crime relates to men who convince females to run away with them. This is seen as a breach of the marriage, the familial order and the male superordination. This article is also centred on the idea of protecting family norms and honour. If the man was related to her, it would not be a crime. In most Middle Eastern societies, marrying a cousin is a preferred custom, especially in Bedouin

⁷⁷⁹ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 304(2)].

⁷⁸⁰ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 304(2)].

⁷⁸¹ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 304(3)].

cultures. The male cousin (son of father's brother) is considered to be a person who has the priority to marry the female cousin. Usually, the cousin is not considered a threat to the loss of honour because he belongs to the same family and holds the same interests and reputation. There is a saying: 'the cousin [male from the father's brother side] dismounts the female cousin from the horse'. This means that he is eligible to cancel his female cousin's wedding. When women marry, on the wedding day, as part of the ceremonies, she is sent to the husband's house riding an Arabian horse. Once the bride rides the horse, it means there is no way of stopping the wedding. However, the cousin from the father's brother side is entitled to stop the wedding ceremony by asking her to get off the horse.

From an honour code's perspective, the cousin would never consider his female cousin who belongs to the same family as a sexual tool. Therefore, article 304 exempts the relative from the liability of committing abduction. This is an article influenced by familial orders. This is an important cultural aspect that needs clarification to understand its effect on women and girls and to better understand cultural marriage.

One point needing illustration is the exemption from punishment under Article 308(1): 'if a valid marriage contract is concluded between the perpetrator of one of the crimes stipulated in this section and the victim, the prosecution shall be discontinued, and the execution of any sentence rendered against the perpetrator shall be suspended.'⁷⁸² This article was repealed in 2017.

However it was applicable at the time of the data collection. It had an influence and determination as part of the language of the JPC.

⁷⁸² 'Qanun Al Oqoubat Al Ordoni' [Jordanian Penal Code No.(12) 1960, amended on 2011, art 308(1)].

[Article 308\(1\)](#) stipulates that the perpetrator of crimes in this section would be exempted from the penalties or any other criminal procedures including temporary detention if he marries the victim. Not only does this article violate the rights of women from unwanted sex or sexual activity, but it favours the protection of her honour over the protection of her sexual freedom. Article 308(1) protects the family and its honour instead of protecting the victims of sex crimes. This article reinforced the favouring of protecting and safeguarding honour over the protection of women who face sexual crimes mentioned in the JPC.

In these articles mentioned above are crimes against family norms and crimes against honour or breach of honour. These crimes are committed against the morals and virtues of society rather than considering them to be crimes against women's freedom from unwanted sex.

This section of the JPC is on crimes affecting individuals' embodied experiences; however, the JPC considered these crimes to be affecting the patriarchal family and the *ardh*. The law undermines the fact that the person who is affected is the victim against whom the act is committed. Because the breach of honour can be a material element of a crime, which can be fulfilled if imposed on the victim herself as an object, it is considered to be a crime committed against family norms and traditions.

C Sex Work Related Crimes

In the following articles, sex workers are not criminalised, but the parties who are involved in managing and administrating sex work for profit are criminalised. However, the language that is used in the following articles is a language that stigmatises females who work in this occupation regardless of their consent. I will explain how the language differentiates moral from immoral

women or innocent from non-innocent women.⁷⁸³ I will also point to the gaps in the law, in addition to the fact that the criminalisation of perpetrators is not detailed enough to include the customers. Moreover, the criminalisation of the pimps and managers of brothels does not cover all cases. In other words, there is a gap left in the articles that saves pimps and brothel managers from punishment. This will be explained in the following articles of the penal code.

[Article 309](#): ‘for the purpose of this section, any house or room or set of rooms in any house which is occupied or frequented by two or more females for the purpose of prostitution shall be deemed as a brothel.’⁷⁸⁴

This section is introduced with an article that defines brothels. According to Dalal, this article has a gap. She explains:

What if the premises were frequented by one prostitute only? It is not a brothel in that case? If this law criminalises the pimps and the profit makers excluding the female sex workers, then it should be a bit clearer in this manner.

I asked, ‘What if they had a building and in each house or apartment they had one sex worker, would they be criminalised?’ The answer is ‘no’. I am not inferring that pimps should be criminalised as an abolitionist position would hold, and I do not say that pimping should be regulated. However, the gap impedes Jordan’s criminal justice system from choosing an alternative regime: regulation or abolition of sex work. If this is an implicit message to pimps not to have more than one sex worker in each house, then it is an implicit message that there are cases in which the pimp can make a profit without facing prosecution.

⁷⁸³ See Smart, above n 342; and Smart, above n 175.

⁷⁸⁴ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 309].

Dalal says:

If you look at the Jordanian Penal Code and look at the section which abolish the ‘*hadd ‘ala al fojor*’ incitement to practice debauchery, and the contradiction with the public ethics, basically in the section on the ‘*hadd ‘ala al fojor*’ incitement to practice debauchery, it defines the brothel as: ‘any house or room or a number of rooms in any house, which is resided or visited by two or more women for the purpose of practicing ‘*baghaa*’.⁷⁸⁵ Two women or more, now isn’t this a gap or not? So they mean that if it is one woman only it is not *baghaa*. This is how I interpreted this one: ‘*he shall be punished with jail penalty from six months to three year*’ look how minor is the punishment, and a bail of 200–500 dinars.’ When someone is managing a brothel, care about 200 or 500 Jordanian Dinars?

Act of procurement via consent

[Article 310](#) criminalises the procurement of females or the omission to produce them, in case any of the following elements were available in paragraphs 1 to 5. As stated in Article 310 paragraph 1: ‘A women under twenty (20) years of age to have illegal sexual intercourse with another person in the country or abroad, provided that such a woman is not a prostitute, and is not known for her immoral character ...’.⁷⁸⁶

In this article, the procurement is criminalised if it was committed against a female under the age of twenty. The crime in this paragraph refers to the female who is not known as a common prostitute. The common prostitute is a female known to be immoral or having a dishonourable character. This article does not avoid stigmatising language. This is to say that procuring (pimping) is legal if the female who was procured was not known as having an immoral character. What if a woman lost her virginity with a pimp or a boyfriend? Can the pimp in the criminal court proceedings argue that the female has an immoral character so as to prove his innocence?

⁷⁸⁵ This means prostitution.

⁷⁸⁶ ‘*Qanun Al Oqubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 310].

In a conservative culture that is strict about what is constituted as moral or immoral, pimps can claim that the procurement of common prostitutes is not criminalised as long as they can prove that the sex worker is a *common prostitute*. Article 310 (1) stigmatises the sex worker, because the sex worker could be considered as a common prostitute whose character is immoral. As an added layer, the pimp will not face any legal penalty if this young sex worker had an immoral character.

Any person who commits the act of procurement of a female so as to let her become a sex worker in the future would be criminalised. Pimps can be criminalised if the female did not become a prostitute. Hypothetically, if a pimp procured a female to work as a sex worker and she has already lost her virginity, the perpetrator may prove in court that she is ‘known for her immoral character’. Moreover, once the woman starts working as a sex worker, she would become a ‘common prostitute’ or someone who is ‘known [as having] immoral character’.

Women who are new to sex work are usually under the age of twenty. This article will not protect a sex worker knowing that she is considered to be a common prostitute or a person who is ‘known for the immoral character’. Pimps may intimidate a female by telling her parents of her loss of virginity as a means of compelling her to practise sex work.

[Article 310\(4\)](#) criminalises a person who procures ‘a woman to leave her usual place of residence in the country, provided that the place is not a brothel, to reside in, or regularly frequent, a brothel inside or outside the country with a view of engaging in prostitution’.⁷⁸⁷

⁷⁸⁷ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 310(4)].

In this paragraph, the pimp procures a female to become a sex worker in the future, outside Jordan. This law requires the incrimination of pimps who attempt to procure women who have not worked in a brothel before. This paragraph also provides a division between ‘whores and Madonnas’. If the woman started practising sex work, she would be considered a public prostitute and an immoral person. Therefore, the pimp will not be criminalised accordingly.

[Article 310](#) supports constituting the discourse on sex trafficking and sex work, and provides power for the procurer. It neither abolishes nor decriminalises procurement. It has an effect of strengthening stigma against sex workers.

Act of procurement without consent

Article 311: ‘whoever commits one of the following acts shall be punished ...’.⁷⁸⁸

[Article 311\(1\)](#) stipulates that a person would be penalised if he/she ‘[procures] or attempts to lead a woman by coercion or intimidation to have illegal sexual intercourse inside or outside the country’.⁷⁸⁹ The intention would be to let her have sexual intercourse in Jordan or outside the country.

[Article 311\(2\)](#) explains that a person would be criminalised if he/she ‘[procures] a women who is not a prostitute, and not known for her immoral character, by making false claims or by other means of deception, to have illegal sexual intercourse with another person’.⁷⁹⁰ This article reflects androcentric cultural understandings: if a woman was already labelled or known as a

⁷⁸⁸ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 311].

⁷⁸⁹ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 311(1)].

⁷⁹⁰ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 310(2)].

person who lost her moral standing, she cannot be deceived or lied to and therefore cannot be protected under this provision even if she did not provide her consent.

Management or assistant in managing brothels

[Article 312](#): ‘whoever commits one of the following acts shall be punished by imprisonment ...’:

- 1) Established, managed, or assisted in the management, or worked in a brothel; or
- 2) Was renting, or was responsible for a house, and knowingly allowed the house, or any part thereof, to be used as a brothel; or
- 3) Was the owner of a house, or the representative of the owner of the house, and rented the said house, or any part thereof, with the knowledge that it would be used as a brothel, or has intentionally participated in its continuous use as a brothel.⁷⁹¹

Women who are working in brothels would assume that they are working in an industry that is criminalised. Those people who manage, own or assist in keeping the brothel would hide sex workers to secure their business. This may lead to the entrapment or limiting of sex workers’ mobility. In this regard, women working in illegal brothels might be exploited. The sex workers themselves might be involved in keeping the brothel. [Rawan, one of the participants](#), spoke of how the perpetrators who exploit those women slipped from the criminal justice system if the female sex workers were involved in procuring. This would complicate the situation for sex workers in this banned industry.

Living on the earnings of a female sex worker

⁷⁹¹ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 312].

[Article 315 \(1\)](#) is gender specific by criminalising men who are living off the earnings of a female prostitute if proven that he ‘totally or partly bases his livelihood on what a female earns from engaging in prostitution’.⁷⁹²

[Article 315\(2\)](#) states that: ‘Unless otherwise proven, a man shall be deemed to knowingly base his livelihood on earnings generated by prostitution if he lives or cohabitates with a prostitute, or if he controls or influences her actions in a manner suggesting that he assists her, or obliges her, to engage in prostitution with another person, or in general.’⁷⁹³

This article is specific to male perpetrators. It incriminates the male pimp if proven that he lives with a woman, has a habit of accompanying her or is exercising control in a manner that is obviously helping her or forcing her to practice sex work. If one of these *actus reus* is fulfilled, he will be considered to be living on the earnings of the woman’s sex work. The part stipulating ‘exercised control or influence over the movements of a prostitute in such manner [which manifest] that he is aiding, abetting or compelling her prostitution’ shows that it is required to prove that he ‘exercised control’ over her in a manner that manifested or appeared as if he is helping her or forcing her to practise sex work. The requirement of appearance or manifestation of ‘aiding’ or ‘compelling’ is vague and not easy to prove.⁷⁹⁴ However, the *actus reus* of the crime is considered as proof of his knowledge and purpose of living on the earnings of the sex worker, ‘unless he can prove otherwise’.⁷⁹⁵

⁷⁹² ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 315(1)].

⁷⁹³ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 315(2)].

⁷⁹⁴ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 315(2)].

⁷⁹⁵ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 315(2)].

[Article 316](#) stipulates that ‘any woman, who for lucrative purposes, interferes with the freedom of movement of a prostitute in a manner suggesting that the said woman assists, or obliges, the prostitute to engage in prostitution with another person, or in general’ is criminalised...’.⁷⁹⁶

This article is gender specific regarding the perpetrator. It is relevant to female pimps who exercise control over a woman to compel her to practice sex work so as to benefit her financially. Rawan explained to me how there are cases where females were criminalised if the male perpetrator is not available. The male pimp is criminalised in article 315, but the separation of incrimination for each gender is in a separate article. The difference between this one and the previous is that the female pimp in this article does not consider her actions and means as evidence of her guilty mind or *mens rea*.

According to [Article 317](#), ‘whoever detains a woman, against her will, in any of the following places, he\she shall be punished ...:

- 1) In any premises with the intent that she may have unlawful sexual intercourse with any man whether any particular man or generally; or
- 2) In a brothel.’⁷⁹⁷

In this article, detaining a woman using force or coercion is criminalised. If the detention is done in a brothel the crime is fulfilled. Therefore, it is not required to prove the intention around why she was detained in a brothel. If a woman is detained in premises that are not defined as a brothel, it is crucial to prove that she was detained for the purpose of making her commit ‘unlawful sexual intercourse’ with any man. This article would not protect the woman, if we take

⁷⁹⁶ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 316].

⁷⁹⁷ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 317].

into consideration that the definition of ‘brothel’ has a gap (only applies if two or more women are sex workers in the brothel) because it is limited, as explained earlier in this section.

The act of detaining a woman is defined in Article 318 regarding the actions and means used.

This article stipulates that ‘if a woman is present in a house or a brothel and is required to have illegal sexual intercourse with another person, the said person is deemed to [detain] the woman against her will in the said house or brothel if the person does not give her any clothing or money with the intent to [compel] her to stay in that house or brothel.’⁷⁹⁸

This article is related to considering whether a woman has been detained by means of withholding her clothes, apparel or any other property that belongs to her. This part is limited to material belongings that could be used to prevent her leaving the brothel. What if the perpetrator withheld a material object, which she does not own, but can be used to create pressure on her to stay in the brothel? This part was drafted following the cultural requirement that women tend to cover their bodies as a way to stay protected. Therefore, the perpetrator might use the woman’s vulnerable position by withholding her clothes or her belongings. She is confined in the brothel if naked or half-naked.

Moreover, I understand how a man who is not related to a woman should not withhold her belongings; in Arab Middle Eastern cultures, a woman prefers to preserve her belongings as a way to remain honourable.

⁷⁹⁸ ‘*Qanun Al Oqoubat Al Ordoni*’ [Jordanian Penal Code No.(12) 1960, amended on 2011, art 318].

D Summary

The JPC, as a legal statute, enforces differences between males and females. The language of the Jordanian law was influenced by cultural understandings. Also, it contributed to constructing sexual identities. The language used in the law divides women into moral and immoral categories in sex work and brothel management. Law's language, which is supposed to deter offenders of sexual crimes such as unwanted sex, rape, sexual harassment and assault, is based on androcentric ideas that aim to protect the standards of the familial and cultural male order, and not necessarily protecting females who are victimised or may face victimisation. It is clear that the idea of honour is an important standard that the androcentric culture is trying to protect. As a result, breach of honour is protected instead of protecting females who have been subjected to rape, sexual assault or any other unwanted sex.

This chapter presents a summary of the first of three main sources of interactions that determine the legal discourse and social practice in Jordan, which I introduced in Chapter V. The other two influences (sources of interactions), which affect sex trafficked victims and exploited sex workers, are the policing of the protection of trafficked victims and gender-based violence survivors, and social attitudes towards the victims of sex trafficked sex workers and gender based violence survivors. These two influences (sources of interactions) will be summarised in Chapters VI and VII.

VII INTERSECTIONAL ANALYSIS OF THE VIEWS OF THE SERVICE

PROVIDERS

In this chapter, I analyse the stories of service providers using an intersectionality framework, by deconstructing the categories of women's oppression as detailed in the literature (such as race, gender, class, group) and by reconstructing dynamic categories that appeared in the participant stories. As explained in Chapter I, I have produced themes of analysis from categories of oppression of sex trafficked victims and exploited sex workers from the nineteen stories that were told by the participants and part of my observations of hospitality and nightclubbing activities. First, I explain the social and cultural changes in Jordan according to the service provider participants, and I illustrate how intersectionality is reflected in the participants' views. Following this, I introduce the themes of intersectional female-oppression.

A The Social and Cultural Changes in the Jordanian Society: Unable to Categorise Sources of Oppression

The social and cultural situation has changed in Jordan since I was last there in 2001. The society is shaped differently from the past. People appeared rushed and had less eye contact. The differences I observed in Jordan appeared to be confirmed when Dalal, a native Jordanian, who is also one of the interviewed service providers, explained how she thought the culture has changed.

Dalal says:

Personally, I cannot deal with weakness, honestly. Why? Because the world has changed and developed. For instance, in the times of your mother and my mother, when they got married; if one of them said to her daughter: 'your father treated me with contempt' or your uncle's

wife tells you: 'your uncle treated me badly'; I do not blame them, because all women were like that in the old days. In addition, in the past, it was different; standards of manhood were different. The man was a man and a woman was nothing but a woman. At that time, the rules were that the man is the one who funds the house. In return, the wife needs to obey his commands. But as a consequence, the man at that time used to respect the women and her children and take good care of them. But nowadays, the man does not fund his family, but still wants to rule the family and take his authority. If a man came to me and had the standards of manhood that were in the past, I would be so glad: a man with all the ideal standards.

According to Dalal, the cultural roles that were ascribed to both genders do not work anymore. I can understand what she was saying, as Palestinian and Jordanian grandmothers believed similarly. Women who to cook, clean the house, take care of their children, raise them and teach their daughters to be shy and modest. They were hardworking, but the grandfathers were conservative, and protective of and jealous for their wives. It might seem contradictory to say that a 'man of the past' is both jealous and respectful of the family at the same time. In Arab societies, men show their jealousy as a representation of their ability to protect and fund their family, including the wife and the female kin. Protecting females is part of the perception that the man's wife, daughters and sisters are part of the male's honour, which must be protected if he is to have a better position in the society. Dalal, who spoke of an ideal version of the past, added:

The duties were distributed. The man works, brings in money and feeds his wife; and the woman stays home, and raises the children and disciplines them, and makes sure that she protects the husband's reputation and honour, takes care of his money, and his parents, and obeys him. She believes she will enter heaven as a reward. Now, the measurements and standards have changed. Now the male began accepting the idea of selling his wife for money. You could find a man like this nowadays. He would want to stay home, and he might be unemployed and drinking alcohol and smoking all the time, and even smokes weed, and deals with drugs. You see? The standards have changed. Nowadays, if a woman from the past generation comes to me and says: 'my husband was authoritative, and we [women of the household] did not go out, and we stayed at home and raised our children'. Yes, I believe in that. This case is not a gross violation. This is the old standards of manhood. But nowadays, where are the standards of manhood in this contemporary time? You [female] what are the causes of weakness for you? Why would a female become weak? In the old times, when a man marries off his daughter to a poor man, he did that because everyone was poor and equal. Who was rich fifty or sixty years ago? No one was rich. At that time, everybody worked so they can eat. And buying meat was only in the '*Eid*' [an Islamic holiday that comes twice a year]. And

people used to be happy at that time. At that time, women didn't complain that their husband did not bring meat, because we were all like that. All of the people who lived in the same environment had similar living circumstances.

Secondly, Dalal, in the quotation above, said that society and everyday living have changed. For instance, the man does not conform to gender roles anymore. Instead of providing for his family, the man now might be jobless and might not take his gendered responsibilities seriously.

Consequently, the male might now financially exploit the wife or female kin for money. Dalal lamented, however, that the women are still living in the past according to the gender roles assigned to women.

Recent changes according to Dalal and the changes I observed in Jordan during my fieldwork in 2015 and 2016 provide the basis for my choosing an intersectionality approach. I understand that cultural changes were not considered in policy making and legal reform in the Jordanian criminal justice approach to sex trafficking.

Several sources of discrimination intersect. It would not be correct, for instance, to say that being a Syrian refugee contributes to sex trafficking; at the same time, being identified as a female does not necessarily determine a person's involvement in sex trafficking. Moreover, a woman's gendered role of submitting to her husband's will is another source of oppression, which does not necessarily cause sex trafficking. However, it could make women vulnerable to sex trafficking if it intersects with other sources of oppression.

Arab men are usually conservative and tend to be protective of their wives, as explained in the literature about Arab family values. However, life has modernised, and this is what Dalal was explaining. I understand that the patriarchal structure has influenced sex trafficking, but it is not the only source of female subordination reported in the stories. The loss of the father (the

superior holder of the patriarchy) might be a category or a hub where women might subsequently become victimised if it aligns with other sources of discrimination. The sources of subordination, which cause discrimination against women, vary and intersect, making it harder to theorise and analyse the situation of women in the context of Jordan. As explained previously, the loss of the father, the traditional protector, can be an intersecting event causing the daughter to be vulnerable to trafficking. Conversely, the holder of patriarchal power, the patriarch, who she is told to obey and respect could exploit her. For instance, in some sex trafficking cases, a girl-child is trafficked by her father and her husband who benefited from her sex work. However, Majida explained how several Syrian girl-children were trafficked after their fathers were killed in the war in Syria.

The elements of sex trafficking crimes were changing during the interviewing period. For instance, when I started interviewing the participants, I interviewed [Nawal](#) in February 2015 and then [Majida](#) in April 2015. At that time, Nawal spoke about how some foreign female-labourers were recruited to work as waitresses; later, they were deceived upon arrival in Jordan to be recruited as sex workers. On the other hand, Majida spoke about a case involving a marriage broker who arranged an Egyptian victim's marriage to a Jordanian man who attempted to exploit her sexually for profit. When I interviewed [Rawan](#) in July 2015, she told me of a massage parlour used as a disguise for sex work; and that later, the massage-parlour industry was monitored by the government that no longer allows massage services for the opposite sex.

Over the last decade, the profile of trafficked women in Jordan changed, depending on which vulnerable groups were available. For instance, in the past, Moroccan and Tunisian women were targeted for sexual exploitation in Jordan. Then later, according to Majida, a parliamentary Bill was passed banning the entrance of Moroccan women under the age of 40 years into Jordan.

Most of the Moroccan and Tunisian stories involved deception about the type of work they would perform upon arrival to Jordan. The females expected to work in waitressing. However, many ended up working in nightclubs and gradually started performing sex with customers. The seventh interview in 2016 was silent about cases of North African women due to this ban. The victims of sex trafficking gradually included groups of Syrian women. Majida mentioned a case of an Egyptian woman who was exploited by her husband in 2015. Power relations in the stories are changing and dynamic, not emanating from one source of women's oppression. The forms of sex trafficking, which emerged in the stories, were also changing. The stories included temporary marriages, exploitation of the wife for sex work, exploitation of the girl-child via multiple temporary marriages and nightclub work, which is a hidden profession for underground sex work and procurement.

The service provider participants' views varied according to how they view the world, what kind of services they provide and whether they work in a government office or not. Their life experiences differ and even their views vary according to their standpoint on gender-based discrimination.⁷⁹⁹ Dalal and [Nawal](#) gave their opinion about Arab women, which was essential for a feminist approach. For instance, Dalal spoke of the construction of female identity and the changes that happened to the Jordanian society. Dalal says this about discrimination against women:

Sometimes the women may feel that there is no equality. If she feels discriminated against, this will make her weak. In some aspects, there is no sex discrimination. If a woman felt that she is not receiving equal treatment like her male sibling, she will have less autonomy in all aspects. Those things sometimes are very minor; for example, if she is bound to serve her brother, her father, or her mother. You see, we are speaking about very simple aspects of life, in which she may feel that they are not fair. So if she does not face sex discrimination, this

⁷⁹⁹ The varying opinions of participants in relation to their position and the office they work in have been analysed in chapter VIII.

will result in gaining her autonomy. I think that discrimination will make her vulnerable to trafficking. It will result in telling herself: 'I am weak because I am not a male; I cannot stand up for myself'.

Dalal blamed women if they were weak; she said that if a woman 'felt that she is not receiving treatment equal to that of her male sibling, she will have less autonomy in all aspects'. Dalal repeatedly used Arabic phrases that mean 'if she felt' or 'if they feel weak' to explain how she thought that it depends on a woman's feeling. However, Dalal thought that females' social surroundings and those they interact with, including female peers and older women, including mothers, sisters, grandmothers, neighbours, aunts and friends, might influence their views by making them think that they cannot survive without a man and sons. Dalal says:

Especially *al nessa al sharqeyat* [Arab women], they may feel weak when they get married if they do not have autonomy in their own household. She is raised on the assumption that '*Ma elek ella jozek aou beitek aou wladak*' [you don't have anything in life to survive on but your husband, your household and your sons]. This affects women making them weak. In this scenario, if we speak about the sex trafficked victims; if this woman wanted an income, to travel, to study, or she has ambition; her weakness would stop her from getting this; and therefore she is easy to bait for sex trafficking since the male offender can control her easily. She would easily be trafficked whether by a middleman in her home country or in Jordan or if she was a domestic person who is targeted by a person who practises fostering or parenting authority upon her, like a father, a husband or her family.

Dalal adds by explaining the women's social surrounding:

You cannot find a female who risks working as a domestic servant, cooking and selling food, sewing and selling clothes. I would do anything to stand up on my feet. Some women got used to being weak. She lived in an environment of weakness. Her mother is weak, her aunt is weak, her neighbour is weak, her uncle's wife is weak. So all of the surroundings are weak. She gets beaten, assaulted and forced to have children, because she doesn't know what contraceptives are, and doesn't know what regulating pregnancy means. And the male is the one who feeds this hurtful authority. This is related to women not having an independent financial status. Not being able to continue her life without a man; this is weakness.

Dalal was implicitly disagreeing with consensual sex work, by saying that females could work and become financially independent instead of becoming weak and vulnerable to sex trafficking

or sex work. In Chapter VII, I have explained further why I reach this conclusion.⁸⁰⁰ However, Dalal's opinion about how the society constructed women's knowledge about her gender roles and weak position showed how this would make her vulnerable to trafficking.

Nawal refers to lack of autonomy rather than weakness when she describes the power imbalance in Arab families. For example, she said that the economic and social changes, in addition to political instability, have caused the loss of Arab women's autonomy. Nawal also thinks that women in the past had autonomy and that this effect was more prominent in cities than in villages. She blamed contemporary forms of economic production for Arab women's loss of their autonomy.

Nawal says:

The Arab women, if you allow me to say, or to generalise about their being, in the last historical period, which was not very far from now, the woman was a holder of autonomy, a 'decision maker' and an important producer.... We see violence against the woman is occurring in cities more than in village societies.

Nawal, like Dalal, also thought that past communal families gave autonomy for women, in particular to older women or to the grandmother who was a source of power and autonomy and whose opinion is taken into consideration in different matters in life. Nawal says:

The grand-mother '*Al sett el kebireh*' is a family reference that is important in the decision-making issues, like marriage, buying lands, houses, in her son's job, and to this moment she still has autonomy.

Nawal confirmed the social changes and that the effects of modernisation in Jordan were sporadic. To clarify the social, cultural and economic circumstances that might be the intersection where trafficking of women for profit from sex work is growing, I analysed the

⁸⁰⁰ See Chapter VII.

second-hand stories of females, including both rescued females and sex workers who preferred not to be rescued.

The Elements of the Crime, Forms of Sex Trafficking and the Perpetrators

As explained earlier, the participants might have been confused or might have intentionally mixed identities in the stories. This might have happened, either due to servicing a large number of clients/victims or for keeping the identities of the victims confidential. However, an intersectional approach avoids confusion or intentional mixing of the elements of different stories. Therefore, I have included a chart that has 19 stories of victims in [Appendix F](#). Each story has a row on the chart.⁸⁰¹ In each row, the three elements of the crime of trafficking, means, actions and purpose, are detailed in three columns. The fourth column lists the intersections, including the source of female subordination, source of female oppression or the source of discrimination. The fifth column allows for the perpetrators involved in each story.

The themes of analysis appear in the five columns of the chart. Within each theme I have identified sub-themes. However, using the chart in the Appendix, I analyse each column/theme by itself. These themes are: actions, means of trafficking, the purpose of exploitation, intersecting sources of discrimination and the perpetrators. From the chart, I have divided the themes, which merged from the stories, to avoid categorising the sources of oppression that vary dynamically; this was an anti-categorical approach. Analysing each theme by itself contributed to avoiding confusion or unintentional mixing of details of the stories. However, I frequently referred to examples in more than one theme.

⁸⁰¹ See chart of storytelling.

First, I start with analysing the elements of the crime of trafficking, the forms of sex trafficking and the perpetrators in the nineteen stories. Secondly, I analyse forms of trafficking. Thirdly, I analyse the sources of oppression in sub-themes where I analyse a sample-story for each source of oppression.

The elements of the crime

The action elements, mentioned in the stories, included the recruitment, harbouring, transfer, transportation and the receipt of persons for exploiting them. The means used were mostly based on the use of force, an abuse of power and authority, to make the female practise sex work: giving and receiving payment to get the consent of the parent of the female. Perpetrators also used deception and fraud to get the female immigrant's consent to practice sex work. Further, the husband, pimp or client used deception of good intention to groom her gradually to practise sex work.

The purpose element of the 19 stories was for the exploitation of the prostitution of others.⁸⁰² Several stories included exploitation in nightclub work, as a part of sexual servitude. The forms of sexual services, which women provided in the stories, were broad.

Forms of sex trafficking

Several different presentations of sex trafficking were reported by the service provider participants. These are summarised here.

Exploitation of foreign wives

According to Majida:

⁸⁰² I used the term 'exploitation of the prostitution of others' because it was mainly mentioned in the *Trafficking Protocol* (2000).

There are a number of cases of Egyptian girls that were trafficked by Gypsies. The Gypsies go to Egypt and marry Egyptian ladies with the mediation of the *dallaleh*,⁸⁰³ or a mediator, in exchange for money. The mediator or the *dallaleh* will lead the gypsy to a bride to marry. The *dallaleh* takes money in return for searching for a bride. In this case, she convinces the (to be) bride that the presented groom is a good man and will be a good husband.

There was one specific case mentioned by Majida, where an Egyptian woman was married to a man belonging to an ethnic minority group known as the *nawar* (gypsies).

Nightclub artists, hotels and apartments, and sex tourism

There are several cases mentioned by the service provider participants about tourism for the purpose of sex. For instance, [Rawan](#) told me about how the Arab-Gulf men came in their cars to a Syrian refugee camp as clients looking for sex.

In my hospitality establishment observations, I noted a number of Arab men from the Gulf, who entered the nightclub in the lobby. A man wearing a white Gulf *thawb*, perhaps in the 50 to 60 year age group, was guided by one of the man-guards in the lobby into the nightclub, though the older man did not seem interested in clubbing. Wearing a white Gulf *thawb* is not typical of clothes worn for clubbing. I do not see how he is going to dance to Western music while wearing a *thawb*. Doing research as an insider is beneficial in noticing odd behaviours that do not align with cultural expectations. In the Middle East and North Africa (MENA) region, most people are not interested in clubbing at a nightclub that plays third generation Western music, especially if they were in their 50s. Whatever the reason for the man to enter the nightclub, it was definitely not for clubbing. Three minutes later, the man exits the nightclub with one of the men-guards. I wonder what he did in the nightclub for three minutes? Then he walked to the reception and started negotiating about something for more than 20 minutes. As he was wearing a white

⁸⁰³ A woman who helps in the search of a bride in return of money.

thawb, which is not common clothing worn in Jordan, I would surmise that these persons were tourists who came from the Arab peninsula region. They had a Gulf accent. I had noticed an increasing number of customers from the Arab peninsula region close to summer time.

In the lobby, I observed a man wearing a formal suit, who was looking like a boss. He was sitting in the lobby on a couch; he monitored his workers and started negotiating the methods of payment including using a 'visa card'. Another group of men from the Gulf were walking around the place. They then entered the nightclub and walked around the lobby looking like customers, and definitely looked like tourists. They were approached by one of the men-guards who stayed at the lobby in front of the nightclub entrance. The Gulf men started talking with the man-guard about something; then they left the lobby. Then, I heard the man-guard telling them in Arabic 'We will definitely satisfy you all'. The Arab Gulf customers went to the elevator, which goes up to the rooms of the hospitality establishment, each one at a different time. They must have had separate rooms.

There are at least 40 nightclubs operating in Amman.⁸⁰⁴ In Jordan, numerous multi-level buildings offered suites and apartments for short stays. Several stories included women who are trafficked in nightclubs and trapped in apartments or in hotel rooms in the same or other buildings. In one story, the trafficked victims were being transported from hotel rooms to the nightclub of the same building. Majida says this about trapped women who are trafficked to work in nightclubs:

Usually, she is trapped, imprisoned in a place. For example, one of the traffickers had a hotel and he would put the victims in the hotel rooms. He puts them under body-guard surveillance. They transport the sex workers from the room hotel to the nightclub under intensive guarding. The sponsor forces them to work in an immoral manner. She gives services to the clients, one

⁸⁰⁴ Haroff-Tavel and Nasri, above n 28.

of them may hug her or kiss her; then she would complain to the sponsor (*kafeel*) or the owner of the nightclub. On the contrary of what she would expect the sponsor to do, he would violently shout in her face, beat her, may drag her by her hair, and force her to sit with the client, by explaining to her that she signed a contract-debt bondage. So the pimp wants her to bring him money to pay off her debt. Then she can travel back to her home country.

Majida also says:

She would think that she came to work as a waitress, but the trafficker forces her to work at nightclubs. Usually from 10 pm to late hours of the night (to the dawn). Usually, she is trapped and imprisoned on the premises.

Staying in a hospitality establishment at different times between February to May 2015, where nightclubbing and pimping of artists have been observed, made me conclude several points.

First, it was an underground entertainment industry that depends on domestic and non-domestic 'artists', which thrives in the summer time. Secondly, the industry depends on male hierarchical power positions. The scene had its own set of hierarchical power and positions. At the top of the hierarchy is the man-boss who was wearing a suit, looking 40 or 50 years of age. He was sitting on the couch all of the time observing what was happening and he looked like a person observing other persons working in the lobby.

Any male who entered the lobby must either salute him, give him eye contact indicating satisfaction and submission, or approach him to speak with him in private. In the middle of the hierarchy comes the three men-guards who were controlling the scene by commanding the young women who entered the lobby what to do and where to go. At the lower end of the hierarchy of power and position comes the receptionist who takes commands from both the three men-guards and the man-boss sitting on the couch. At the base of the hierarchy are the women who take orders from the three men and from the boss who sits in the lobby. The men-guards were young

men aged in their 20s and 30s. Their similarity in age with the women facilitated levels of intimacy not obvious between the women and older men-guards.

Randa clarified the kinds of services the women perform for clients in nightclubs. It is called *bteftah kass*, which means opening an alcoholic drink. The client orders an alcoholic drink for the female artist. The female artist sits with the customer, at his table, until she finishes drinking her *kass*.⁸⁰⁵ Mohammad said this is called *mojalasset al zaba'en*, which literally means sitting with the clients. The client is eligible to be entertained intimately excluding sexual intercourse.

I observed the woman artists walking out of the nightclub, after midnight, most probably back to their apartment; they looked drunk and it was hard for them to walk. They were leaning on each other while walking.

On that same night around 3 am, my husband and I woke up to strange noises outside the balcony. It was around 3 am. I heard a woman screaming. I instantly jumped out of bed and on to the balcony. I saw a taxi driving slowly from the side where some of the night working females walked to earlier; the taxi parked in the middle of the intersection. The woman was screaming in the taxi. The taxi stopped in front of the hospitality establishment then parked there; a few minutes later, three men approached the taxi and started arguing with her; she was shouting back in their faces. Then they lowered their voices, and a car came and parked near the taxi. A man got out of the car and went to the taxi. The man was one of the familiar men-guards at the lobby who secured the entrance for the women to the nightclub. I could not hear what they were saying or what they were doing to her while bending towards her in the back seat of the taxi. Next, the back door of the car opened and the pimp was bending over. After a short time, the

⁸⁰⁵ *Kass* means a glass of alcoholic beverage.

woman gradually became silent. Then, the taxi went off with the woman. I was sure another female accompanied her. They all left the place except two men; one of whom was wearing the uniform of the hospitality establishment-waiters and the other wearing casual clothes. They both entered the hospitality establishment. A question arises as to what they did to silence her and make her submit to them. Where was she taken in the taxi? She did not seem happy about it.

These observed scenarios, which were repetitive, led me to conclude I was witnessing an underground nightclubbing industry. The kind of services provided was not obvious to me; however, they were along similar lines to what the participants, including Randa, Majida and Mohammad, explained and what was reported in a cited study in the literature.⁸⁰⁶

Temporary marriages

[Rawan](#) says:

I have heard a case about a Syrian refugee who had ten daughters; he said that he would be willing to marry off any daughter for 200 JOD. This is human trafficking though for some people it may not seem like that. Even if the marriage contract is available and the procedure became legal and valid under Sharia' laws, it does not mean it is not trafficking anymore. This is still trafficking if he calls out for his daughters to get married for 200 JOD; besides, this contract can be temporary sometimes. And even if the marriage was not temporary, he received an amount of money in return for marrying off his daughter and this is different from *mahur*. The *mahur* is built on a formal contract with the consent of the female and male, which can be described as a gift for the bride. This is definitely not like offering his daughters in return for 200 JOD.

Temporary marriages were a disguise for legitimising sex with a woman without losing the honour of the man, or the woman, entering into the contract. It is done to avoid facing accusations of adultery or being identified as the male involved in purchasing sex. The story of Halaa, which was documented by Women's eNews and mentioned in the introduction,⁸⁰⁷

⁸⁰⁶ Haroff-Tavel and Nasri, above n 28.

⁸⁰⁷ See her story in Chapter I.

clarifies Halaa's view that the temporary marriage between her and the person she fell in love with was for his intimate pleasure.

Zahra was a Syrian refugee about 15–16 years old who was married off to 21 men before she was rescued. The marriage contract was done by a *sheikh* who pretended to be an authorised marriage arranger. The victim was deceived into marrying the men who claimed each time that it was a permanent marriage.

The Perpetrators

The perpetrators included transnational criminal groups, pimps and lovers, the harbouring or fostering family, gang members working in nightclubs and hotels, sex tourists, the husband and kin, and marriage brokers. In Hanin's case, the perpetrator was a customer.

[Nawal](#) told me stories of four girls who were trafficked by the same organised criminal group. Baraa, Darin, Catherine and Eva were all trafficked to work in nightclubs and forced to perform sex work. The criminal group was a transnational organised criminal group, which forced Darin to do sex work initially in her home country. She was then transported by the group to Jordan to continue the sex work.

Zahra, the Syrian refugee girl-child, was transported from Lebanon to Jordan via the connections of a transnational organised criminal group. The group included different parties who worked together, including the fraudulent marriage arranger, the sponsor and others who participated in arranging the hymen plastic surgeries. In her case, her mother was also a perpetrator who transferred Zahra to the sponsor. The situation raised the potential of organised criminal groups working on a transnational level in the Middle East including in Syria, Lebanon and Jordan.

The transnational organised groups in the stories use various forms of sex trafficking, including nightclub work, temporary marriages and exploitation via trapping victims in premises for forced sex work.

Several service providers mentioned that nightclubs and hotels were the hub for sex trafficking. Not every such establishment is involved in sex trafficking. However, many nightclubs and hotels were involved.

As nightclubs operate legally in Jordan, they provide a disguise for underground sex work. What makes the women working in the nightclub at high risk of trafficking is because sex work management is illegal, as is sexual intercourse outside of marriage, while the nightclub business is permitted in Jordan. What makes this even more confusing is that no clear distinction exists between sex work and nightclub work. Not having a clear distinction confuses the females working in this environment of her rights and what conduct is considered criminal or not.

Nightclub owners sometimes sponsor a female's visa to enter Jordan to work as a waitress. The recruited female finds out that she is going to work in a nightclub. Majida said about females who worked in nightclubs that: 'The sponsor forces them to perform unacceptable behaviour and an immoral manner.'

[Rawan](#) explained that some of the tourists, who come from other countries, in particular, Arab men coming from the Gulf, head to Jordan looking for sex. Rawan and her colleagues conducted a field trip in one of the Syrian refugee camps in Jordan and some of the female refugees complained about Gulf men entering the camp in their cars looking for temporary marriages. Rawan documented evidence of people who enter Syrian refugee camps in Jordan without a legitimate purpose or authorisation. For instance, she said that she documented complaints from

female refugees about offers made from Arab men who come from the Gulf countries to find brides or temporary marriages. Rawan says:

I remember that I once did fieldwork in one of the Syrian refugee camps in Jordan, and they told me that some Gulf men came and approached them on their doorstep. So what on earth is this man from the Gulf doing in a refugee camp?

The other form of sex tourism is the case of Arab men going to nightclubs looking for sex services, as observed during my field trip to Jordan.

Lovers and pimps also feature in the stories. They might use the ‘deception of good intention’.

The expression, ‘deception of good intention’ is a phrase I use to describe various scenarios in which the lover or the pimp may deceive the women by claiming that he intends to marry her.

The person pretends to be in love with a woman and promises to marry her, but becomes her pimp. Darin, one of Nawal’s serviced victims, was deceived by a man claiming that he had good intentions of marrying her. He then confiscated her passport and forced her to do sex work.

There are also cases of harbouring families. In this part, I refer to sponsors who exercise power over or abuse vulnerable persons who were harboured or fostered in sponsors’ homes.

Nawal tells the story of Hanin who was exploited by a woman as she was ashamed to go back to her family after being stigmatised. A woman (perpetrator) spotted her and sheltered her in her home, but then started sexually exploiting her for profit. The perpetrator used Hanin’s vulnerable position by gradually convincing her to perform sex work with customers. The female perpetrator started breaking Hanin’s will by deceiving her into having sex with the first client, Mr Nader. Mr Nader used the means of ‘deception of good intention’ to encourage her to have sexual intercourse with him because he would marry her later. During the time he dated her, he

spent money on the person who fostered her. Once he got what he wanted from Hanin, he referred her to another man (customer).

In some of the reports, the husband attempted to or exploited his wife for profit. Two examples emerged: [Nawal](#) referred to Catherine and [Majida](#) referred to the case of the Egyptian bride. A husband might deceive his wife or use power and authority associated with gendered roles that require the wife to obey the husband. Using a mediator, who is called the *dallaleh* or the *khattabeh*, is a method for mediating the approval of the female to marry a man looking for a bride. The *dallaleh* was culturally used to look for a wife in a certain city or town. The *dallaleh* was given money in return for the service. Nowadays, the word *dallaleh* is misused: to find a female for a temporary marriage or to exploit as a sex worker.

In Egypt, the mediator is called *dallaleh*. As mentioned before, Majida demonstrated that:

The mediator or the *dallaleh* will lead the gypsy to a bride to marry. The *dallaleh* takes money in return for searching for a bride. In this case, she convinces the bride that the presented groom is a good man and would make a good husband.

Majida told a story of an Egyptian female who married a man from Jordan after being convinced by a *dallaleh* that he was wealthy and would provide her with a good life. Rawan told me of women working as *dallaleh* in the Syrian refugee camps. She referred to several reports done by international media channels including Aljazeera, a French news channel, an Israeli news program and other media. Their reporters went to the Za'atari refugee camp and reported that marriage brokers negotiate with sex tourists who come from Arab Gulf countries and introduce them to young girls to marry them.

There are cases such as the girl-child, Zahra, who was offered to the customers for 4000 to 5000 JOD. The intersecting sources of subordination might include the refugee status, economic status

or social status (death of father). Not only is sex trafficking a multi-million dollar business worldwide, it is also a significant business in Jordan.⁸⁰⁸ Temporary marriages, such as the case concerning Zahra, earn the network between 84,000 to 105,000 JOD, knowing that 4000 to 5000 JOD is how much each client paid to the organised group for a temporary marriage.⁸⁰⁹ Of course, this is not the only case of a temporary marriage. Sex trafficking is a *million dollar business* in Jordan alone.

Given that families are patriarchal, the male kin influence whether their daughters or sisters are trafficked when they have the *mens rea* for exploiting them. However, in the case of Zahra, the Syrian refugee girl-child, who was exploited via temporary marriages with 21 husbands (clients), it was the mother who convinced her daughter to go to Jordan by deceiving her about a man who wanted to marry her. Later, the mother convinced the daughter to marry other men because it was the only source of survival for Zahra's mother and siblings. This story illustrates matriarchal power.

There are twelve cases where a Syrian girl-child was trafficked after the parents (mostly mothers) of the girls were given money, according to Majida. Using their power as mothers, they convinced their daughters to perform sex work or other forms of exploitation as their only hope of surviving. However, in all of the mentioned cases, the mothers were poor, refugees or widows who did not have a patriarchal family to protect them. As explained in Chapter IV, Arab families are communal and have a system where the older males are obliged to protect their female daughters or siblings.

⁸⁰⁸ See significance in chapter I.

⁸⁰⁹ The amount 84,000 to 105,000 JOD is approximately AU\$158,000 to 197,000.

Catherine, whose parents were divorced, was living with her father and her stepmother.⁸¹⁰ The father and stepmother exploited the girl-child by marrying her off to a husband who belonged to a transnational organised criminal group. Another story was about a father who forced his daughter to work in the nightclub under cover as an entertainment artist. The girl was previously divorced and underage. Her father was sexually harassing her and was exploiting her for profit from this work as an artist in a nightclub.

The last group of perpetrators to be discussed in the case of sex workers is the pimps. Sex workers are not criminalised. However, if they are sex workers or were previously sex trafficked and involved in prostituting other women, they might face criminalisation. Rawan explains:

Now when the security centres deal with her case, they deal with it as a case of *da'ara* [prostitution]. They don't deal with her kind of case as a crime of human trafficking. You know that *da'ara* is not criminalised under the law; the law only criminalises the administration of *Dar-al-Baghaa* [brothels] not the *da'ara* by itself. I am surprised! So these cases are referred to the mayor. He proceeds with a resolution of administrative detention. In this scenario, the '*bint*' woman would be either a victim of sexual exploitation or she would be an offender who has a partner with whom she was administrating the brothel or sex trafficking. The male-partner who is conducting the crime with the woman is absent in the case. Where is the other male person involved as an offender in this crime? We cannot combat the sexual exploitation of women without penalising the men that are practicing exploitation. As a consequence of this dilemma, all of us, who work collectively to combat this crime, focus on the women themselves. This will never solve a problem.

Rawan explained how women victims cannot expect criminal justice. Some women are convicted of pimping, without incriminating or convicting any male pimp. Rawan called for a victim centred approach as a remedy.

⁸¹⁰ Catherine's story is in the appendices.

Constructed Sources of Oppression as Intersectional Discrimination

In this section, I categorise intersecting sources of subordination that cannot be explained separately. I present them in a thematic order in sub-themes to show how they are linked to each other and have intersected in some cases. As explained in the literature, the intersectionality approach considers sources of oppression to vary according to their effects on women.⁸¹¹ Sources intersect with each other, not as a cause, but as a hub or an intersection where women are more at risk of getting trafficked if the intersecting circumstances are present.⁸¹² Discussed below are the intersecting sources of oppression. As explained earlier, the sources of female oppression are dynamic with numerous intersectional discrimination. However, I include one intersectional figure, Figure 6-1, as an example before explaining the constructed sources of oppression.

⁸¹¹ See McCall, above n 75, 1771.

⁸¹² See reviewing literature on intersectionality in chapter II.

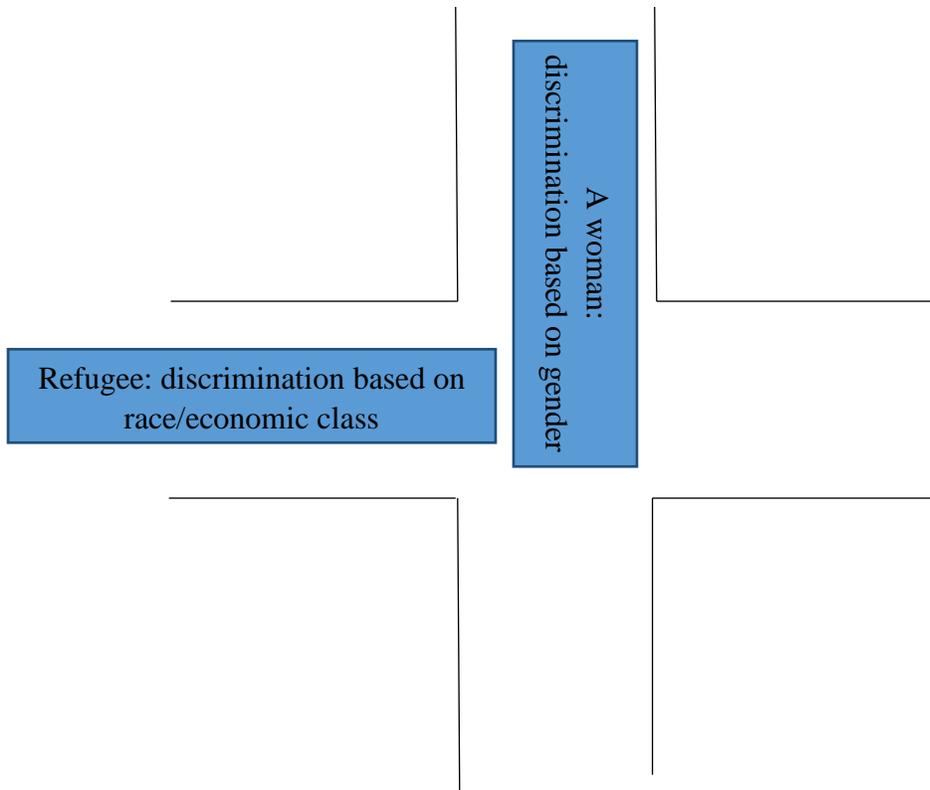


Figure 6-1 Intersection of gender and refugee status

Syrian refugee women and girls suffer from intersecting sources of oppression. As women, they suffer from gender-based discrimination; however, this is not a cause that stands alone. Gender intersects with the fact that she is a refugee, who suffers from vulnerability due also to social, racial and economic class.

Zahra was a Syrian refugee girl deceived multiple times via temporary marriages. The fact that Zahra wanted to get married became the basis of her deception. As a girl-child, she conformed to gendered customs in Syria roles of having to get married to end her vulnerable status. The requirement to marry is not the only source of discrimination. It intersects with the fact that she belongs to a low economic class and her refugee family in Lebanon needed money to survive.

Mohammad, Radiya and Majida explained that particular ethnic groups have customs of letting their female kin or wives perform sex work or do nightclub work. Radiya and Majida classified these ethnic groups as ‘the gypsies’. According to Al-Absi and Al-Absiová, gypsies who belong to low economic classes in Middle Eastern societies are isolated and face discrimination.⁸¹³

The Gypsies in the Middle East are known to practise singing, dancing and acrobatics as professions.⁸¹⁴ They also let their children and women beg for money.⁸¹⁵ According to Radiya and Majida, they allow their women to perform in nightclubs or engage in sex work. I was unable to collect more information on the Gypsies as an ethnic group in Jordan, but I understand that women and girls occupy intersecting and complex situations making them more vulnerable to trafficking.

Mohammad explained that some groups permit their daughters, disguised as artists, to work in nightclubs. He explained the dilemma that, after rescuing the girl-child, the Administration of Criminal Investigations returns her to her family, but they cannot guarantee that parents would not traffic their daughters again. In the cases that Mohammad discussed, the girls suffered discrimination on the basis of their gender. However, this is not the only grounds of discrimination; it cannot stand alone as a source of discrimination as other females acquire their rights of being protected without discrimination. Nonetheless, arguing that the girls suffer from discrimination based on race or economic class is not a sufficient ground for argument, as it can be argued that other gypsy girls practise their rights. In addition to this, being a gypsy and a female aligns with the fact that her family belongs to the marginalised low economic class.

⁸¹³ Al-Absi and Al-Absiová, above n 601, 79–92.

⁸¹⁴ Ibid.

⁸¹⁵ Ibid.

Several victims suffered discrimination following their divorce. Hanin became susceptible to trafficking once she was divorced and her family abandoned her. Radiya mentioned a gypsy girl who was underage and divorced. She was discriminated against on the basis of her status as a divorcee that interlocked with other sources of discrimination. She was vulnerable to trafficking. All of the stories mentioned above are included in the appendices; however, I highlight some of these stories in this section while explaining sources of oppression.

The constructed sources of oppression as schematised in Figures 6-2 to 6-7 reflect social status, economic status, social stigma, constructed gender roles, the absence of the patriarchal source of power and insufficient access to justice.

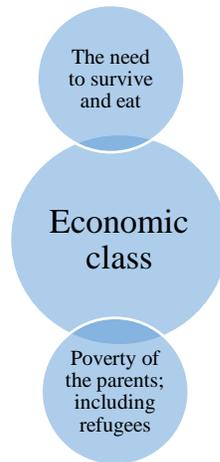
Constituted economic class

Figure 6-2 Discrimination due to economic class

Several service provider participants associated sex trafficking with poverty. However, there was no evidence to suggest that poverty causes sex trafficking. Instead, poverty is an intersection in which sex trafficking occurs, along with other intersecting sources of subordination.

In the stories of the twelve Syrian refugee girls, the mothers were mostly widowed and refugees at the same time. Their economic class was low. The daughters were exploited to support the family.

Dalal says:

Not to forget that the factors of vulnerability are numerous; the most important one is poverty. Following poverty comes the

Unfortunately, as you may know the Syrian females and Syrian refugees face a dilemma. Perpetrators started trafficking women under the age of 18. We received 12 cases of Syrian females that came to us. One of the cases was a female, and this female had several daughters, and every female who had daughters was deceived with money. The female pimp would tempt the mother by saying: 'your daughter can earn for you 20 to 25JOD in a single day'. This is a good and sweet offer for a Syrian family, a case, or a Syrian family that is weak and vulnerable, which did not have a source of income. These girls would help the family, by working in a nightclub, or by taking orders (*in the nightclub*), or to perform an artistic show. In reality, these girls were sexually assaulted, some of these girls were as young as 12 and 13 years old. None of them were above the age of 18. Twelve of these girls were brought here ... for shelter. We worked on aiding them, and we brought their parents, because these girls are underage. Because this is a case of trafficking of a girl-child, the owner of the nightclub was arrested. When you want to aid those girls, it is a complex issue; to whom do you return them? And the answer is to their families. The majority of these girls' fathers are either killed or a Martyr. We call their mother, who is usually the custodian parent, to sign a guarantee contract which bans her from letting her daughter work in this kind of a job. Then we would deliver the daughter to the mother.

sulta [patriarchal authority]; especially that the family is poor and the father is the only funder.

Dalal's point included two intersecting sources of oppression, class and patriarchy. Dalal included both of them together emphasising how it becomes harder for women if two intersecting sources of oppression meet.

Dalal adds:

You won't imagine how hurtful poverty can be and how much it can weaken the poor person. The planted idea in the mind that 'if I run away from my funder or the holder of the authority I will starve'.

Majida refers to debt bondage:

The victim is usually poor and cannot provide the amount, which she owes. Therefore, she feels that she needs to do sex work to pay off the debt. And in some cases, she is forced to because she needs to send the money to her family.

Rawan also pointed to poverty as a factor that contributes to sex trafficking. Rawan says: 'Some of the factors are ... poverty ...'.

Zahra's temporary marriages to 21 men supported her mother and siblings who were refugees in Lebanon and did not have a source of money.

Constructed social status

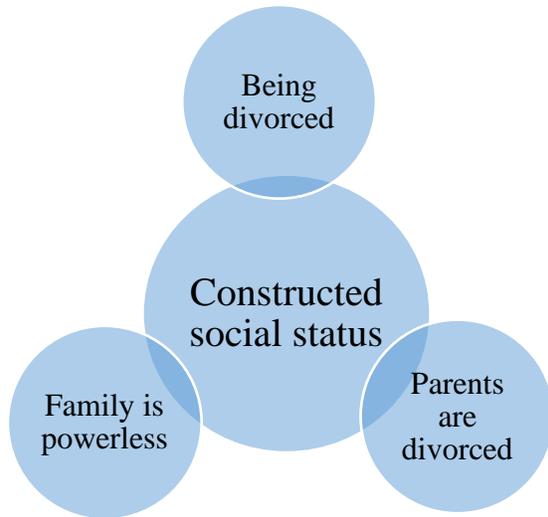


Figure 6-3 Discrimination due to constructed social status

A woman's social status is constructed to reflect females' position in society, for example, her personal circumstances and whether she is divorced, widowed, orphaned or underage. Further, if the family suffers from violence or weaknesses regarding their position in the society, the social status of the female is adversely affected. Dalal says:

Her social status is definitely a factor. I know of several cases when women got sex trafficked by the husbands, because they obeyed their husbands, and because they did not want to be exposed, or because they had children, or their social status made them easy prey [*ested'aaf*]. Sometimes her father traffics her. Or, as I told you before if she was orphaned and is being fostered by the relative they may traffic her. Or she may live with her single mother or have weak family ties.

Nawal's views. Interviewed in Jordan. February 2015

Darin

Darin is a girl-child who lived with her divorced mother. She was forced to stay with her mother. She was forced to get married, at the young age of 13 years, to a man that is 30 years older than her. He was mistreating her and used to beat her. Her father died later, and after that she requested divorce from her husband. She did not have any source of money because she did not have family, and her financial situation was not good. Her mother was sick and she had to support her mother. One person approached her on the grounds that he wanted to marry her. This person told Darin: 'come and let me introduce you to my family which lives in a near city'. Later, he confiscated her passport and forced her to work in one of the nightclubs in prostitution. He told her: 'It is over for us working in our country; let us go to another country. You will go to Jordan to work in other working conditions'. So when they arrived to Jordan, he extradited her to the same prostitution network. The lady was trained by this network in belly dancing and body language. So when she came to us she was with clothes and appearance that is not easy for a person to absorb. When she came to us she was different from after she left the centre; her clothes and hair were different, her discussion was different, her behaviour with people was different. It was all with the efforts of the service providers (females). Now this girl went back. She is working and she is living away from where the network existed. She lives with her mother now.

Hanin's situation was mentioned earlier regarding how she was gradually convinced to perform sex work. The perpetrator took advantage of her social status. At the age of 13, she was married to a man who was 30 years older than her. She got divorced because her husband used to beat her. Without a father or a relative, and as her mother was sick, she was powerless.

Majida explains powerlessness:

Sometimes the victim may become weak and vulnerable, and easy prey for the trafficker [*ested'aaf*]. The cause is usually her social status. Traffickers notice that she is weak. The husband is one of them who harasses her or trafficks her. In other scenarios, it is caused by her own fear; she would not go to the shelter because the trafficker would convince her that if she goes to the police they will give her back to them. For that reason, the poor victim would not seek a safe place, look for a shelter that would help her, or seek the help of the police.

Majida explained how the social status of females might stop her from seeking help from the police. A word used by both Majida and Dalal was *isted'aaf*, which does not have a synonym in English. I define the word *isted'aaf* as: to belittle someone or consider them to be powerless, leading to exploiting the weakness or powerlessness of the person. The fact that this word exists in the Arabic language confirms that it is part of the cultural and communal construction of power positions due to the act of *ested'aaf*. This is not to say that *ested'aaf* does not happen in English speaking societies or in any other linguistic culture.

The act of *ested'aaf* directed at a female reflects her social status following the loss of the superordinating male; that is, for example, most fathers of the twelve refugee girls were killed in the war in Syria. A female victim, named Baraa', who was an orphan supporting her younger siblings, needed money to pay the debt owed to a criminal group that sold drugs to her brother. Her brother's condition [addiction] added to her powerlessness.

Social stigma

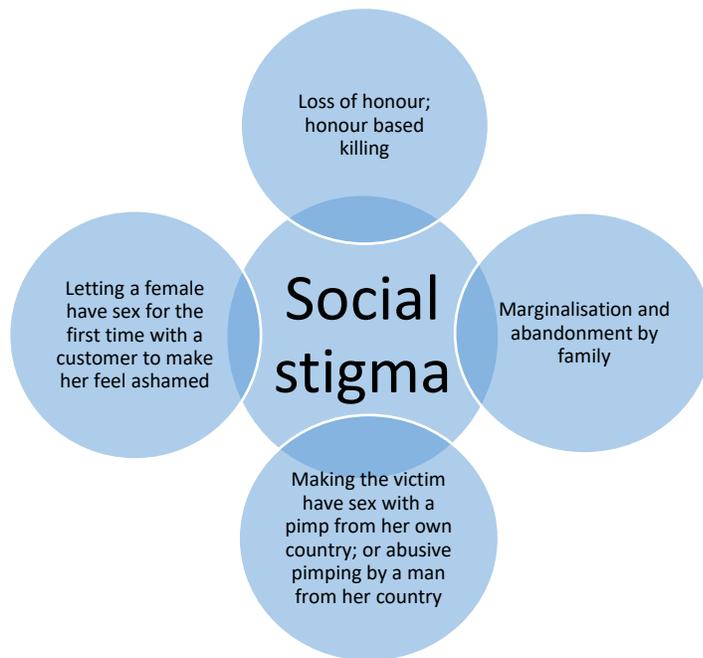


Figure 6-4 Discrimination due to constructed social stigma

Several victims were threatened with either disclosure of photos of her to her family or exposure of her sex work or sex relationships to her family. The social stigma relates to the constructed image of how the female should behave in a culture. For instance, she is obliged from a cultural perspective to preserve her honour by being shy and modest and by not having intimate relationships outside marriage. Arab patriarchal families become angry towards a woman who has lost her honour. This crime is also called the crime of anger. The reaction of the family may include physically hurting her or abandoning her, resulting in her marginalisation. The family may try to kill her, and if she survived, she would face social and legal stigma.

Hanin

The girl Hanin was married at 20 years of age. After two years of marriage, she had an affair with a person who was close in her social circle. He requested from her that she leaves her husband so he can marry her. Her family was against the idea of leaving her husband. But she got divorced to start her life with the lover. Of course the lover was deceiving her. He abandoned her. The lover took her *seegha* and her *mo'akhar*. He took all of what Hanin got from her divorce. So she was ashamed to go back to her family again. As a consequence, she became homeless, and became a vagabond in the streets. She is not educated, and became homeless. One day, a lady spotted her, and took her to her home claiming that she felt pity for her conditions. Later, the lady gradually started bargaining by telling her: 'we do not have money to pay the electricity bill', 'we do not have money to pay the water bill', 'today we have a friend [male] coming to visit us tonight, maybe me and you can convince him to give us some money'. The sponsor convinced Hanin to talk with the family friend.

So the family friend, Mr Nader, started visiting every day, bringing some alcohol, so Hanin started flirting with Mr Nader. So later Mr Nader told Hanin that he would like to meet with her outside the house, because he loves her and he would like to marry her. She started dating him and meeting him outside the house. Later, the affair started elevating until they started having sexual intercourse. So Nader started spending money on Hanin and the lady and he gave them food too.

Continued on next page.

Hanin (continued)

Later, Nader referred her to another man. This other man is a friend of Abu flan. All the sudden she found herself working to support the lady's family. And she doesn't take anything in return from the family but food. When Hanin started objecting on the grounds that they exploit her, she was threatened by them, by telling her that her phone-calls with those men are recorded, and if she tells anybody, she will be disgraced (exposed) using the recorded videos and calls. Therefore, they threatened her that she must keep performing this work. In this case, Hanin started feeling threatened. If her family discovers all this they will kill her, whether they knew formally or informally. This is what she said to me. So Hanin decided to complain and relieve herself, and what ever happens, let it happen. She handed herself over to '*Hemayet Al-Osra*', it was required from her to stay there for eight months, so she handed herself to '*Hemayet Al-Osra*'. ... Can we stop the interview? I feel a bit overwhelmed and agitated by her story, when I remembered her. I need to smoke.

The participants included several stories of social stigma, and how that created pressure on women to perform sex work.

Hanin was abandoned by her family because she had an affair, which resulted in her request for a divorce. Hanin's host threatened Hanin with exposing her sex work to her family when she objected to performing sex work.

Miral, on the other hand, was a married woman who was threatened with exposing her sex work to her brother and father. She was married and her husband also threatened to expose her sex work to her male kin. The situation suggests that the loss of honour associated with sex outside marriage does not necessarily result in the man killing the wife or female kin. In Miral's case, her husband was trying to save his wife from a powerful organised criminal group and avoiding her exposure to her family. In this story, her stigma and the threat of being killed were a source of oppression that constrained her from exercising her right to exit sex work. As explained later, these intersecting circumstances consolidated other constructed sources of oppression and making it hard for her to access justice.

Majida said that her organisation works with the families of the sex trafficked victims to help them accept the female kin victim. The family might envisage that the female victim has done something shameful and blame her for what happened to her, even if she was forced. Majida explains the reaction of the parents of the victim, and how:

sometimes they do not accept what happened. Therefore, the civil society institution may help in informing the family of the victims of their daughter's experience.

Rawan says:

Some of the factors are ... the shame: '*wasmat-al-aar*'.⁸¹⁶ The woman might have left her home or had her first sexual relationship for certain reasons ... due to mental reasons or perhaps she faced some form of pressure from the family. The problem is that even if she wanted to fit in her society again after what happened to her; the society will produce a form of a 'stigma' [the word stigma was said in English]. Therefore, it will be very hard to let her fit again in the society. The society will marginalise her. Marginalisation will force her to go back and live in the same situation.

[Rawan](#) said that her culture has two binary responses for females who are vulnerable to sex trafficking or who are trafficked. The first response is to marginalise her or stigmatise her, while the second response is to belittle her (the act of *ested'aaf*) or even traffic her. Rawan thinks that the two responses are split and contradictory by saying that:

Sometimes I see this society living a schizophrenic character. It describes itself as a conservative culture, but at the same time, it exploits the female who may bring profit. So sometimes there is exploitation, and in some scenarios, you see forms of abandoning and marginalisation of the individual.

Dalal told a story about an orphan girl who was not concerned about social stigma because she did not have male kin or a husband. Dalal said that the girl complained to the police without any fear of stigma. Dalal says:

According to this case, the male foster parent used to have sex with the child with the knowledge of his wife. The husband had sexual intercourse with the child while his wife was home. When the child became 15 years old, after making her lose her virginity, he started bringing men as sexual partners for the child. So he started pimping. He became her pimp. He used to take money for an exchange of sexual intercourse with the child. The child couldn't take it anymore; one way or another, she ran away from the house and went to the '*hemayet al osra*' shelter. This case is an example of vulnerability due to honour. Now, the only thing that

⁸¹⁶ '*Wasmet al-aar*' means stigma.

allowed the girl to go to 'hemayet al osra' is that they were not her parents. Therefore, she didn't care for honour, reputation or any other reason.

Constructed gender roles in the patriarchy and family

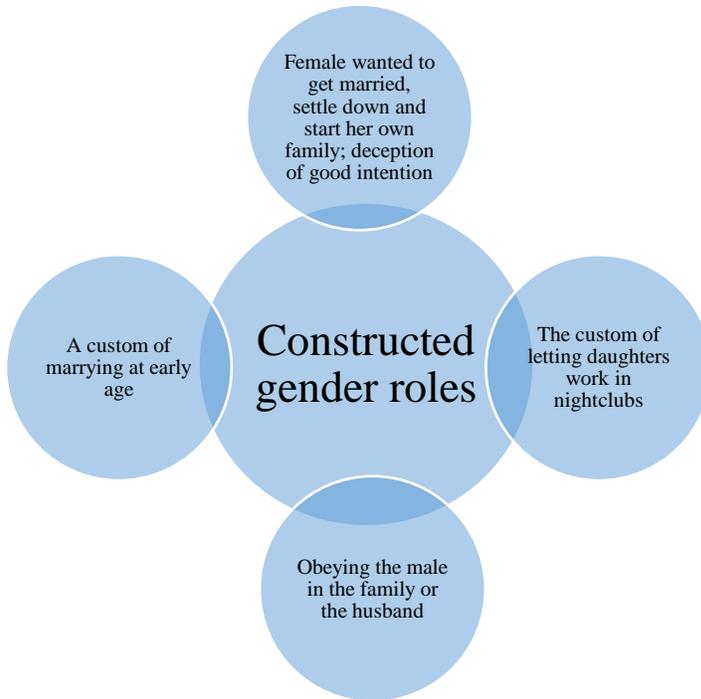


Figure 6-5 Discrimination due to culturally constituted gender roles

The constructed gender roles may be a base for discrimination.

Dalal explained that Jordan's society considers the position of

males in the society as important, more than their female

siblings. She says:

The *bint* is not important; *trooh be steen dahyeh*' [she can get screwed]. The important thing is my son and my family. This is the issue of honour that we face. So any person who possesses

Zahra

I remember a case about a Syrian refugee; she fled to Lebanon with her family following the war in Syria. Her single parent, meaning her mother, sent her to Jordan, claiming that there is a man – a citizen from an Arab country living in Jordan– looking for a bride. When she arrived to Jordan, she signed a marriage contract. Later, it turned out that the contract is Orfi. It was a sham contract and the sheikh who arranged the contracts was a fake sheikh who is not authorised by the sharia' courts to arrange marriages; they were an organised dark-web who works in this business. Following four days of marriage, the husband disappeared. And the lady who was sponsoring her told her: 'don't worry, we will find you a new husband'. So the sponsor found her a new husband, and they did the same thing to the victim. They brought a fake sheikh and proceeded with a fake contract, which she signed. And the same scenario was repeated. Later, the sponsoring lady brought her a new husband. The groom sat with her and met her. In that time she was in her 15 or 16 of age, but her body appeared as if she was a little older than her actual age. So the sponsoring mother told her that he wanted a *binit* not a *mara*. So following this they started processing hymen plastic repair for each time she gets married to fake her virginity.

This matter continued until she was married to 21 men. One day, a man found out about the situation, and decided to act as if he wants to marry her like the previous 21 customers. So they demanded the same price they offered to the previous customers, which includes the payment of 4 thousand JOD. So he told them let me go withdraw money from my bank then he went and reported to the police.

Continued on next page.

Zahra (continued)

this authority over a girl, like a father, an uncle, or a brother, then sexually trades her, she would definitely be in a vulnerable position in facing them.

Dalal explained the effect of the patriarchal system on constructing gendered roles for men and women. Dalal says:

This all relates to the authority [patriarchy] and the vulnerability and weakness that you are discussing with me. Sex trafficking has different ways of appearing, including the hidden one. There are authorities which lead the woman to trade herself. You should check the life history, look at the mother! Look at the father! Look at the environment! The life that the victim was living. She will get to a point where she starts trading her own body, without even realising it. Therefore, we must relate to the foundations of the family, which is the religion, the culture, the innate, the environment; all of this is our basis. When this basis is fragile, how can we build a system on it? Regardless of whether you are talking about the construction of the male or the female. When a male is born in a society, which considers the hierarchy of superordination as the following: the male, then another male, then comes the male again, of course, this male will traffic the female. Accordingly, the mother would say to her son: 'you are the male, you are the head of the hierarchy, you are our everything, you are the great one and the rational one, and this female is born to serve you, whether she was your mother, your sister, or your wife.' The man is told that the female is the one that is born to make him happy and provide him with convenience. Of course, as a result, he will traffic the female, whether it is his mother or wife.

Dalal explains that women are constructed to obey, respect and please the male to survive. Even mothers prefer to protect their sons' interest to survive in a patriarchal society and to make her position powerful.

The constructed cultural understanding that a girl would marry at an early age, a situation that some Syrian refugees were

The administration of criminal investigations proceeded with the arrest of the offender. In this case, we are not talking about one or two offenders, it is a whole gang.

I remember how Zahra came to our office and we provided shelter for her. So we tried to help her, but the problem is that this girl did not complete her education. She only completed sixth grade. So she didn't have any skill that may help her. I remember when she talked with me. She used to say: 'I do not have a problem in working as a domestic servant'. I told her: 'My dear! You cannot work as a domestic servant; you are very beautiful, the employer will exploit you my dear.' [The participant laughed]. She was a very beautiful girl. I remember that the UN Special Rapporteur for the Syrian Refugees, continued working on her case. They were trying to find her a residency status in another Arab country.

When 4 to 5 thousand JOD were paid by customers for marrying her you can imagine how this puzzled her. When she tried telling her mother about this, her mother told her: 'how do you expect us to live if you do not get married [the mother and the family]?' Can you imagine the mother would say this to her daughter? Her whole family in Lebanon were economically depending on her. How do we find a solution for this case? She was so pretty like a flower, and was very pure and innocent. This was too painful and sad. She used to say how she did not accept what was happening to her.

finding themselves in, is a result of seeing marriage and starting a family as empowering for their girls. Zahra was a girl who was initially deceived by her mother and a sponsor female in Jordan in that there was a man who wanted to marry her. A young girl is told that getting married is essential in her life. She may be deceived into having hymen plastic surgery, thinking that if the man found she was a virgin on the first day of marriage, he would keep her as his wife permanently. Zahra was deceived, believing their 'good intention to marry' and in light of women's gendered roles. The situation is supported by Dalal's saying: 'you don't have anything in this life to survive on, but your husband, household and sons.'

As a little girl, Zahra, who was categorised as a Syrian refugee and of low economic class, would have envisaged getting married as an empowering step for her to escape from her vulnerable reality. After finding out that she was getting married to support her refugee family in Lebanon, Zahra started complaining to her mother, but with no effect.

Loss of source of power position (patriarchy)

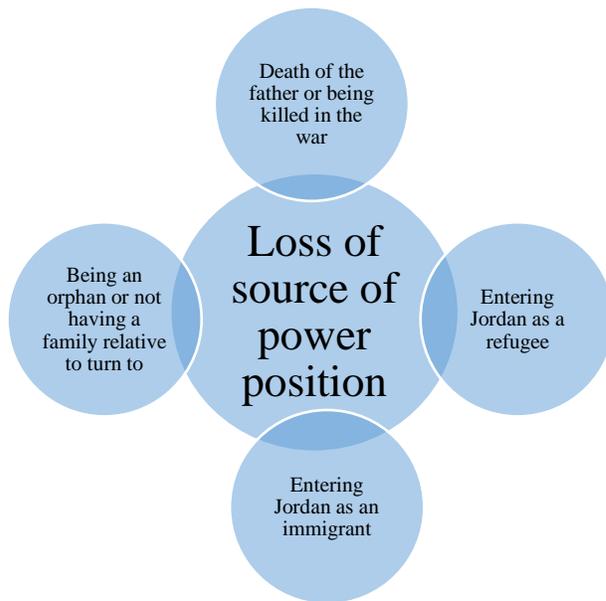


Figure 6-6 Discrimination due to loss of source of power position

Females who do not have a family male (kin and husband) might become vulnerable to sex trafficking. For instance, Dalal demonstrated how the girl whose father was dead would be vulnerable to trafficking. Dalal says:

Now, there are a lot of cases in which the child would be 'yatemet al abb' [orphan due to the death of her father; it also means that her mother is still alive] and her brother controls her.

Dalal explained the complex intersecting issues that might have an effect. She says:

In some cases, it is the uncle who has authority if the father is absent. Now, this female may slip from the hands of the father to the brother; if a girl is an orphan that is fostered by her uncle, and she has no other place to go to. Understand the idea? She can slip from the hands of the father, and run away to stay with

Nawal's views. February 2015

Baraa

One of these girls is Baraa who was responsible of taking care of her family because her father had passed away. She worked in hand crafts to provide for her family. Her brother was a drug addict. She had to pay her brother's debt because he used to be a trouble maker. He exhausted her financial status due to his debt. He got her in a situation in which she became susceptible to exploitation. So some people offered her money to pay the debt of her family; then later she would repay them her debt gradually. She agreed to this, and she fell for their deception. Later, it became clear to her that she will not be able to pay all of her debt. Those people offered her work with them in a sewing business in Jordan. So she agreed and went to Jordan to find out that she will be working in prostitution. They expropriated her passport. Then she stayed in those premises for months. Then she was arrested for being *motalabbeseh*. [was found practicing fornication]

She was forced to do this [practicing sexual intercourse]. She came to us while evocating for help. She said: 'I would kill myself rather than go back to that kind of work'. Baraa stayed at our centre for a while; we rehabilitated her at our centre. We provided her with help to exit this bad experience, from a social, health and mental perspective. We trained her, and taught her computer skills and language courses. We also retrieved her self-confidence. Her appearance was very different when she came to us. She was another human. It was all in six months.

her uncle. She could run away from the brother and refuge. But when the uncle has authority over her [due to absent of father], where will she go?

Baraa was financially independent and working from home to support her siblings because her father was dead. The only source of patriarchal power in her household was her brother, who misused illegal drugs. He took her money to pay his debt to an organised criminal group, who trafficked drugs and had a sex work business in Jordan. Baraa did not have a male to protect her in a society that depends on males to protect the women. In her case, there were two intersecting sources of oppression: economic class and social class.

The vulnerability of the Syrian refugees, in particular, the status of the orphan girl-children, was a matter that needed further elaboration. As Dalal explained, being an orphan must be considered when understanding the trafficking of girl-children without a patriarchal family to empower her.

Immigrant females can be exploited on the basis of their migrant status. For instance, Dalal differentiated between the means of trafficking of migrant and domestic females. Deception and coercion were used in the cases of migrant females.



Figure 6-7 Discrimination due to constituted challenges to access to justice

Some women are intimidated by the idea of contacting the police. As mentioned above, some women prefer not to contact the police. [Rawan](#) explains:

I don't think that they find it easy to contact police easily. According to international treaties, the treatment of the victimised woman should be on the basis of considering her as a victim, even if she was involved in the crime of trafficking, for instance, if she was involved in a case of *da'ara* [prostitution], she should be treated as a victim; not as an offender that is referenced to the police as a person who is claimed against in the case. For instance, we do not have this guarantee in the law. Therefore the woman is too terrified to report this to the police. Honestly, it's not that easy to inform the police about this. For a woman, it is not obvious what human trafficking is; even if she was fully conscious and aware that human trafficking is a crime, she doesn't know the parties that are responsible [for helping her]. In addition to this as

Rawan's views. July 2015

Miral

This is a story about a Syrian girl named Miral, who was sheltered in one of the organisations. Miral was hesitating in the beginning. She was vulnerable as her passport was confiscated. Miral needed money when she arrived to Jordan; therefore, she worked in the sex trade. After working in the sex industry, she decided to stop working in this industry, but she was confronted by the traffickers because they confiscated her passport, in addition to the fact that they did not give her enough money for the work she did. They used to give her money according to the number of sexual relations that she could manage. Following the exploitative conditions, Miral was fed up with the situation. The pimps threatened to expose her sexual activities to her family if she did not comply with their commands. Her husband knew about the situation and couldn't figure out how to help her, especially as her brothers and father did not know about her sex work.

Miral's vulnerability was complicated; the offenders threatened to expose her to her family in addition to confiscating her travel documents. When she came to acknowledge that they exploited her and did not give her enough money for the job she was performing, she decided to press charges against them to the police. However, she was hesitant about reporting them to the police.

Continued on next page.

I told you, she is treated as an offender formally and socially; instead of being treated her as a victim.

Rawan said that the experience that victims go through in the legal processes is stigmatising. This fact might hinder the victim from contacting the police. Miral wanted to lodge a complaint, but was scared of the police reaction. She was afraid of being identified as an offender. Miral and her husband were intimidated by the organised criminal group. They were even thinking that these groups might have connections with government staff. At one point they decided that Miral should go to the police to raise a complaint, while her husband went to the office of combating corruption. According to Rawan, the wife was detained even though she was entitled to be considered as a victim under article 12 of the *Human Trafficking Legislation* (2009) (HTL). Miral faced the threat of being killed by her male kin; she was also too intimidated to access justice due to the strength of the organised group; they had confiscated her passport. These intersections made her vulnerable to discrimination as she did not have easy access to justice as did other female victims.

Miral's access to justice was due to impediments of implementing the provisions of article 12(a) of the Human

Rawan's views. July 2015

Miral (continued)

She thought that the offenders might have strong connections to the government and the police. They may block her complaint to the police, which may result in them not considering her case as sex trafficking. She thought that the pimps may have powers to consider her affidavit a confession about practising sex work. However, when she submitted her complaint to the public defence and to the police, she was identified as an offender. I submitted a request to repeal the criminal prosecution to exempt her from criminal liability and to consider her as a victim of sex trafficking. What I remember about this case is that Miral made an agreement with her husband that she would press charges against the offenders. If she was arrested as an offender he must go to the office of 'combating corruption'. So they did not go together into the police centre in case they arrested her. But in the end the offenders were convicted but the problem was that she was arrested due to a claim against her.

Trafficking Legislation (2009) of exemption of punishment. This is explained further in Chapter VII by introducing the HTL and the [gap](#) in article 12(a).

Another issue of obstructing their access to justice, Rawan explains how incrimination of females appears to be an important matter to discuss. The incrimination of a male trafficker is being shadowed by the incrimination of the female partner who was previously trafficked in the past. In this scenario, women who are sex trafficked then later became sex workers might recruit other females to work in the sex work industry using exploitative and non-exploitative means.

The women would become human-shields for the male pimp trafficker to avoid his conduct being criminalised. These scenarios would impede the women from accessing justice as they were conceived as criminal.

The power relations of the criminal groups and their intimidation were reported in the stories appearing in the chart. According to Mohammad, immigrant labourers prefer not to contact the police given their previous conceptions of police in their own countries. Stories of non-native speakers of Arabic language who came to Jordan as labourers and were in general too intimidated to contact the police. Rawan reported two cases of Asian females who were exploited for sex work; they approached her organisation for help, but refused to contact the police.

Mohammad's views. June 2015

Nightclub girl-child

We dealt with cases related to underage girls who worked in a nightclub. It is the '*mojalaset al zabaen*' [letting of females sit with customers to provide intimate entertainment]. We have identified the victims and removed them from the place of exploitation and have arrested the offenders. One of the dilemmas that we face is that most of the families who exploit their kin girls are from non-Jordanian nationalities; these families have the custom of practising these professions. Exploitation is under the cover of letting them work as artists and singers in nightclubs. We face impediments when the families have these habits of exploiting the child; for instance, reintegration of these victims into their society is hard. Usually the families dress their daughters for the sake of trading them under disguised names such as a singer in the club. The problem is that we cannot ensure that the victim would not return to the same work. The Jordanian legislator got aware that families are the number one traders of these victims. Therefore, the legal term used in the legislation is the 'abuse of authority', knowing that the families are the first recruiters of victims via family authority.

The other issue that is alarming regarding access to justice is that patriarchal and customary practices are not bound by the law. The laws do not provide access to justice to underage girls. Several participants were saying that they must return underage girls to their families, even if the exploiter was her close relative. In other cases, familial reconciliation is sought to solve the matters related to the exploited girl-child.

Majida explained how dealing with the twelve Syrian girl-children was complicated, as they had to return the girls to their mothers. They let the mothers sign an agreement with the government banning them from exploiting their daughters again.

Conversely, Mohammad explained to me that certain ethnic groups in Jordan have the custom of exploiting girls in nightclub work. However, he explained that they cannot ensure the parent would not exploit their daughters again. He also explained how it was hard to reintegrate those victims in the society after rescuing them. Though he applauded the Jordanian legislator who is aware of these practices, and that one of the elements of trafficking in the HTL was the ‘use of authority’, the criminal justice system returns underage girls to their offending families.

B Summary

Traditional patriarchal rules are one of many impediments stopping women and girls from accessing their rights. Equality before the law is different from actual practice given gendered roles in patriarchal structures and recent social changes in Jordan.

According to the 19 stories reported by the service provider participants, sex trafficked victims and sex workers face intersecting forms of discrimination, which hinder them from accessing justice, and social and health care. The Jordanian criminal justice system might incorrectly

identify victims as a trafficking perpetrator. Most of the cases involved intersecting forms of discrimination. An abusive father controlled a gypsy girl-child who was divorced and belonged to a minority group. Syrian refugee girls also face intersecting forms of discrimination that limit their access to justice. As refugees, they belong to be a low income group, and in some cases, their mothers are single parents. Gypsy and Syrian girl-children, having been identified as trafficked victims, were returned to their families even though their families exploited them. Such events demonstrate the strength of patriarchal rules, and the society's image of the family as the first and the last resort. Zahra was the exception, as the UN arranged her residency in another Arab country.

The society is split on people's attitudes towards sex trafficked victims and sex workers. Rawan described the Jordanian society as being a schizophrenic society because it refuses deviance, while sexual exploitation is taking place in different underground industries. Sexual exploitation for profit is mainly by organized criminal groups and thrives on sex tourism from other Arab countries.

In the following chapter, I further explain the attitudes of people in Jordan, as one of the three influences on sex trafficking victims and sex workers. Chapter VII introduces two influences: people's attitudes to sex trafficked females and sex workers, and policing the protection of sex trafficked females and exploited sex workers.

VIII THE PROTECTION POLICY IN JORDAN

At the outset of this chapter, I can argue that the Jordanian criminal justice of sex trafficking and sex work adopts a semi-prohibitionist approach. This is what I conclude from the text of the JPC on sex work related crimes. However, the intertextualisation of the legal language and policy practice towards sex trafficking blurs the fact that the policy is semi-prohibitionist.⁸¹⁷ This is explained further when I refer to the discussion of Article 12(a) of the Human Trafficking Legislation (HTL) and the established criminal and social justice for the victims of sex trafficking. In this chapter, I focus on the ‘social formation’ using the dialectical relational approach to the policy practices in Jordan via analysis of the voices of service providers to understand their ‘social actions’ in the Jordanian ‘social institution’.

First, I conduct a criminal legal analysis of the HTL and compare it with the obligations and definitions provided in the *Trafficking Protocol* (2000). Then I explain how some of my interviewed service providers had a misconception in interpreting the HTL. Second, I describe the Jordanian criminal justice approach to policing the protection and criminalisation in sex trafficking crimes. I analyse this policy using Fairclough’s dialectical-relational approach applied to ‘social formation’, ‘social institution’ and ‘social action’ using the language of ideology and power that emerged during the interviews with the service providers.⁸¹⁸ The participants’ views showed evidence of their constituted social formation.

⁸¹⁷ Reisiql and Wodak, above n 184, 90.

⁸¹⁸ See chapter V on the explanation of the CDA approach and the dialectical relational approach.

A Introducing the Jordanian Human Trafficking Legislation (HTL) and the Protection Plan

Jordan signed the CEDAW in 1980 and ratified it in 1992. Article 6 of CEDAW stipulates obligations on Jordan to *suppress all forms of traffic in women*.⁸¹⁹ Also, CEDAW requires gender equality and the end of sex discrimination.⁸²⁰ In 2009, as refugees and immigrants fled to Jordan, as explained in the introduction, Jordan ratified the UN *Trafficking Protocol* (2000)⁸²¹ and passed the Jordanian HTL.⁸²² I consider the endorsement of those two legal documents as part of the historical intertextualisation of the discourse on sex trafficking and women in Jordan.

Though Jordan had made efforts to combat human trafficking,⁸²³ the Jordanian legislature did not amend the JPC to modify the legal language that constructs identities for females as either having a moral or immoral character.⁸²⁴ In 2015 and 2016, there was a negotiation in Jordan over the drafting of two Bills for amending the JPC;⁸²⁵ but these Bills did not reform the language about sexual crimes against women.

The concept ‘social formation’ in my case study refers to the historically constituted Jordanian ‘ideology, language and power’, in relation to sex trafficking, in the policy frame of prevention, prosecution of offenders and the protection of the victims. In other words, the social formation refers to the contextual attitudes of the Jordanian society, criminal justice authorities and victim

⁸¹⁹ *United Nations Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) Art 6.

⁸²⁰ *United Nations Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) Art 2.

⁸²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁸²² ‘*Qanun Mane’Aletjar Be Albashar*’ [Jordanian Human Trafficking Legislation No. 9 (2009)].

⁸²³ As explained in the TIP reports.

⁸²⁴ See chapter VI on the analysis of the legal discourse of the JPC.

⁸²⁵ Follow the link in Arabic from the official website of the Jordanian Ministry of Justice < <http://moj.gov.jo/DetailsPage/MOJ/NewsDetails.aspx?ID=588> >; see also <<https://www.alwakeelnews.com/article/140071>> .

support service providers towards sex trafficked females and sex workers. I contend that the constituted and constituting social formation influenced the discourse on sex trafficking. The social formation, which affected the discourse on sex trafficking and sex workers, was contextualised following a historically constructed cultural and social understanding of gender roles, crimes and rights. The intertextualisation of the social formation occurred with the policy reform towards trafficking crimes in 2009.⁸²⁶

‘Social institution’ refers to a ‘speech community’ of service providers who have been part of signing a national memorandum of understanding with the government to protect trafficking victims and prevent human trafficking.⁸²⁷ The adopted policy for protecting the victims was influenced by social formation.

The concept ‘social action’ relates to the actions and interactions of the participants and other service providers, provided by the frame of social institution. According to Fairclough’s dialectical analysis, the social institution provides its members with a structure on how to act in its settings.⁸²⁸ The social action represents micro relations, which would also include the actions of the service providers, their ‘verbal interactions’,⁸²⁹ and their understanding of things. They belong to the context of the social institution and social formation in Jordan in addition to their response and actions towards sex trafficked females and exploited sex workers.

⁸²⁶ By ratifying the Trafficking Protocol, passing the HTL and seeking a national service provision memorandum of understanding and alignment.

⁸²⁷ Fairclough, above n 172, 38; See chapter I explaining the ‘speech community’ and the ‘social institution’ in CDA.

⁸²⁸ See Fairclough, above n 171, 38.

⁸²⁹ Ibid.

Powerful speech determiners conclude the JPC and the HTL as laws. The HTL, which was passed in Jordan in 2009, was part of the intertextualisation of the discourse on sex trafficking crimes as it was part of the plan to combat human trafficking in Jordan.

According to the HTL, trafficking crimes were defined along similar lines to the *Trafficking Protocol* (2000) definition. Both definitions are included in a [table](#) in [Appendix H](#) to show similarity and differences. Article 3(a) of the HTL defines the crimes, in translation, as:

(1) The recruitment, transportation, transfer, harbouring or receipt of persons, for the purpose of exploitation, by means of threat with power or use of threat with power, or other forms of coercion, abduction, of fraud, of deception, of abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, or; (2) The recruitment, transfer, harbouring or receipt of an individual under the age of 18 for the purpose of exploitation, even if exploitation did not involve the use of threat with force or any other means set forth in section (1) of this paragraph. (3) for the purpose of paragraph (a) of this article, exploitation shall include exploitation of individuals for forced labour, forced work, servitude, slavery, removal of organs, in prostitution, or any form of sexual exploitation.⁸³⁰

The following legal provisions demonstrate the elements of the crime of trafficking: the *actus reus* (actions elements and means elements) and the *mens rea* (purpose element).

The actions element of the *actus reus* includes five actions: the recruitment, transportation, transfer, and the harbouring or the receipt of persons. In addition to this, the actions element fulfils the *actus reus* of the crime if the offence was against individuals under the age of 18 for the purpose of exploitation. HTL complies with article 3 of the *Trafficking Protocol* (2000).

⁸³⁰ 'Qanun Mane'Aletjar Be Albashar' [Jordanian Human Trafficking Legislation No. 9 (2009)] Art 3(a) 1 – 2 and (b).

The means in the HTL are similar to those mentioned in article 3 of the *Trafficking Protocol* (2000). The means used in the HTL are:

threat with power or the use of threat with power, use of force, or other forms of coercion, abduction, of fraud, of deception, of abuse of authority or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.⁸³¹

‘Threat with force’ is a limiting phrase. It connotes the threat or use of threat that is based on power. If a person threatens a person without power, then it is not criminalised under this law. For example, if a person threatens a woman with telling her parents of her sex work involvement or distributing a nude picture of her, it would not be criminalised under this provision, because the ‘means’ of the threat are not enforced. This part of the definition ignores culturally specific needs that would aid in suppressing the crimes of trafficking.

According to Muhammad, the ‘abuse of authority’ was apparent in the HTL because some families exploited their daughters by requiring them to work in nightclubs. Muhammad said:

Usually the families dress their daughters for the sake of trading them under disguises such as a singer in the club. The problem is that we cannot ensure that the victim would not return to the same work. The Jordanian legislature got aware that families are the number one traders of these victims, so the legal terms that is used in the legislation is the term (abuse of authority), knowing that the families are the first recruiters of victims via family authority.

The *Trafficking Protocol* (2000) contains the term ‘abuse of authority’. However, Mohammad suggested that the Jordanian legislature framed this term with the understanding that families potentially exploit their daughters. The language used by Mohammad reflects a positive image of criminal justice, policing and legal reform. This positive image is part of the discourse because

⁸³¹ ‘*Qanun Mane’Aletjar Be Albashar*’ [Jordanian Human Trafficking Legislation No. 9 (2009)] Art 3.

the Jordanian social formation influenced his attitude about the HTL. I contend that Mohammad's responses provide one example of the language and ideology of the social institutions that influenced the discourse of service providers.

Thus, 'giving or receiving of payments or benefits to achieve the consent of a person having control over another person' is the means that needs further elaboration, due to service provider participants' stories of trafficking with these particular means such as the case of payment of money to the mother of the refugee girl, Zahra. Zahra's mother had legal control over Zahra. The receiving sponsor paid money to the mother. However, legal control is not needed to be proven, since the girl was under the age of 18. The actions element, which transfers (the actions of the mother) and/or harbouring (the actions of the sponsor), meets the crime of trafficking if the purpose element of exploitation existed.

There are cases of practising de facto control, which may include people above 18, for example, getting consent from individuals who are controlling a woman when they do not have legal control.

The *mens rea* of the trafficking crime is 'for the purpose of exploitation', which as defined in the HTL includes the 'exploitation of prostitution'.⁸³² The HTL is unlike the Trafficking Protocol in that the latter includes 'the exploitation of the prostitution of others'.⁸³³ The exploitation of prostitution is a broad concept and could include the exploitation of the prostitution as a profession. Dropping the word 'others' results in having a law that criminalises the exploitation

⁸³² 'Qanun Mane'Aletjar Be Albashar' [Jordanian Human Trafficking Legislation No. 9 (2009)] Art 3(b).

⁸³³ Ibid; *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes*, opened for signature, 2237 UNTS 319 (entered into force 25 December 2003).

of prostitution regardless of whether the exploitation is conducted on the self or other individuals. For the crime to be fulfilled, the person must have the purpose of exploiting prostitution as a profession. As explained earlier in Chapter II, the Trafficking Protocol used the term ‘exploitation of the prostitution of others’,⁸³⁴ so as to leave the matter of whether sex work should be regulated or abolished to the States Parties as an internal matter.⁸³⁵

Clearly, by using the term ‘exploitation of prostitution’ in the HTL, the Jordanian legislature has chosen to abolish sex work in the HTL, though the JPC with its amendments does not take an abolitionist approach to sex work; it was partly semi-prohibitionist.⁸³⁶ However, the term exploitation of prostitution is broad to the point that it could include the purpose of exploitation of the prostitution of the individual’s self.⁸³⁷

‘Sexual exploitation’ is also mentioned in the HTL as purposes of exploitation of others. The aforementioned term sexual exploitation has not been defined by the *Trafficking Protocol* (2000), neither has it been interpreted by the HTL. However, as explained by Gallagher, the inclusion in the Trafficking Protocol of the means of ‘abuse of authority or of a position of vulnerability’ has broadened examples of sexual exploitation⁸³⁸.

Mohammad explained that the *Trafficking Protocol* (2000) included the forms of exploitation as examples that are unlimited; while in the HTL, the meaning of exploitation was mentioned as an exclusive list of what exploitation represents. Mohammad defended the Jordanian government’s

⁸³⁴ Gallagher, above n 177.

⁸³⁵ Ibid.

⁸³⁶ Refer to chapter VI on the analysis of the JPC.

⁸³⁷ See the explanation given by the chairperson of the drafting group of how the term ‘exploitation of the prostitution of others’ was accepted in the draft of the *Trafficking Protocol* (2000); see also Gallagher, above n 177, 38.

⁸³⁸ Gallagher, above n 177.

use of limited exploitation forms under a legal principle that says ‘no crime or penalty without a law’.

According to article 8 of the HTL, perpetrators who commit the crimes mentioned in article 3\1 shall be punished by imprisonment of a period not less than six months and\or by paying a fine of not less than 1000 JOD and not more than 5000 JOD.

Article 9 of the HTL provides a penalty of temporary imprisonment with hard labour of no more than ten years and a fine of 5000 to 20,000 JOD.⁸³⁹ The punishment is applied if the crime was committed against certain individuals as specified in article 9\1-a-b: children under 18, females, the disabled, crimes committed via exploitation of the prostitution or other forms of sexual exploitation. One circumstance that makes the penalty harsher involves cases related to the perpetrators, which include organising a criminal group or joining or abetting the organised criminal group.

Article 12\1-a of the HTL stipulates that regardless of what is mentioned in other legislation, the public defence has the right to terminate or exempt from prosecution victims (persons) injured by human trafficking crimes.⁸⁴⁰ However, it remains a matter of right given to the prosecutor to decide whether to exempt the female victim from prosecution or not. A committee, which consists of the president of public defence and two appointed judges from the Jordanian Court of Cassation (Supreme Court) must approve the prosecutor’s right to order the termination or exemption from prosecution. I view this right to order the exemption from punishment as obstructed by the fact that a committee must approve the right of the prosecutor to issue the order

⁸³⁹ ‘*Qanun Mane’Aletjar Be Albashar*’ [Jordanian Human Trafficking Legislation No. 9 (2009)] Art 9.

⁸⁴⁰ ‘*Qanun Mane’Aletjar Be Albashar*’ [Jordanian Human Trafficking Legislation No. 9 (2009)] Art 12(a).

of exempting the offending victim. The language used does not provide powerful enough tools for law enforcement initiatives or for advocating initiatives or supporting NGOs. It allows the androcentric culture to interfere in decision-making on whether to exempt the offending victim.

The HTL language does not obligate the prosecutor to exempt the victims, but instead gives a 'right to order' that a committee must approve. Two service provider participants commented on this article. First, Rawan said, that according to the HTL, it is an obligatory rule to exempt the offending victim. Second, Mohammad said that this article helps in supporting the victim to access justice without intimidation of either being treated as an offender or identified as a victim. I understand how the powers of the HTL may result in misconception about the exemption from punishment under Article 12(a).

Rawan commented on how exoneration from penalty was obstructed by saying that:

The victim needed to get the entitlement of exoneration from penalty, and to be referred to as a victim, not as an offender. According to the law, the public defence is obliged to form a special committee to review her request of exemption from criminal liability, and to refer to her as a victim; later, we followed up at the public defence office and found out that they did not form a committee for this case.

[Rawan](#) explained to me how she considers the public defence as to being obliged to form a committee. However, this law does not provide a powerful language, which obliges the head of public defence, the prosecutor or the committee members to exempt the victim.

I asked Mohammad whether he could suggest a legal amendment or legal method that would encourage the victim and facilitate their willingness to contact the police even though they are intimidated by honour killing or loss of honour. Mohammad replied that article 12 contributes by encouraging the victims to contact the police. He says:

Article 12 reduces the burden on the victim and enables her to go to the concerned authorities, because the victim of trafficking is a human being who is a prisoner of a trafficking crime that is committed by herself, because she was ordered to commit the crimes. If she is considered to have committed an offense in violation of the law, this part prevents her from communicating and accessing the security services and the judiciary to free herself, because she was involved in committing such crimes. The Jordanian legislator has tried in article 12 of the HTL, through forming a committee, to stop the prosecution of this victim, if she commits any crime while she is a victim. I consider this as an important legislative development.

[Rawan](#) added how the victim and her husband were intimidated from reporting their case to the police. She added, referring to Miral, that:

She thought that the offenders might have strong relations with the governments and the police by blocking her complaint to the police, which may result in non-consideration of her case as a case of sex trafficking. She thought that the pimps may have powers to consider her claim as an affidavit of confession on herself of practicing sex work. However, in practice, when she submitted her complaint to the public defence and to the police, she was identified as a defendant.

Rawan and Mohammad's voices suggest that the power relations, which are formed within the contextual social formation, influenced the 'speech community' of service providers. The influence of the 'social formation' resulted in accepting this article as a tool to protect the victim from being prosecuted, given crimes committed under the JPC. For instance, when asked 'Can you recommend a legal reform?' [Rawan](#) answered that they should start with 'implementing the law' as it provides protection but it is not enforced. On the other hand, Mohammad said, as quoted above, that he considered article 12 'an important legislative development'.⁸⁴¹

Both examples are a representation of article 12 of the HTL as a good method to abolish the prosecution of sex trafficked victims from being punished for committing adultery, or other

⁸⁴¹ See [Maohammad's opinion](#) in Appendix E.

crimes that are stipulated in the JPC. The discourse on sex trafficking and the laws in Jordan have created complicated layers and unclear access to justice for sex trafficked victims.

In light of the speech community among the service providers, I further explain the protection policy in Jordan.

B The Jordanian Protection Scheme

In discussing the policy of protecting the Jordanian criminal justice regime, I refer to it as the ‘social practices’ and ideologies that affect the social formation of the discourse on trafficking.⁸⁴² The power of the law, as explained in the previous chapter, provided a powerful discourse on sex trafficking and sex work. To have a comprehensive understanding of the discourse on sex trafficking, I present the text and practices as discourses under study. In this section, I explain the local Jordanian protection practices, and I also refer to regional plans for the protection of trafficked victims.

Mohammad identified the four strategies against trafficking that he called the four ‘pivots’. He explained:

As I said, the fight against human trafficking is working on the four pivots, which were explained earlier ... we cooperate with the civil, national, regional and international organisations; ...we focus on policies of prevention by preparing workshops that contribute in raising awareness; and develop the capacity of workers in organizations. In Jordan, there are many national organizations that are working together to combat the crime of human trafficking through various projects and programs aimed at capacity development and awareness.

The second pivot is the prosecution. Many issues are reached and recognized by national, regional and international organisations, on the grounds that some forms of human trafficking

⁸⁴² Norman Fairclough, ‘A Dialectical-Relational Approach to Critical Discourse Analysis in Social Research’ in Ruth Wodak and Michael Meyer (eds), *Methods of Critical Discourse Analysis* (Sage Publications, 2nd ed, 2009) 162.

occur via transnational organised groups. This pivot is done through cooperation with international organizations, via protection pivot, which is like an aid bag that includes a range of remedies on the grounds that some forms of human trafficking occur via transnational organised groups. ... As well as the fourth pivot, as I said, is based on cooperation and transparency between the NGOs and us.

The four pivots or strategies of prevention, prosecution, protection, and transparency and cooperation are being processed via the alignment and collaboration of all government and NGO offices. Mohammad explained that:

All stages of the fight against the crime of human trafficking are done in Jordan, through the sharing and exchange of information between organizations and government agencies.

I contend that the alignment and collaboration was part of the intertextualisation of the social formation and speech community of service providers.⁸⁴³ Alignment and collaboration among Jordanian civil societies and government offices represent the change and intertextualisation as explained by Fairclough.⁸⁴⁴

Following the ratification of the Trafficking Protocol in 2000, the Jordanian Government involved civil society institutions, legal clinics, NGOs and governmental offices in signing a memorandum of understanding (MOU) on the issue of trafficking in persons. I formed several conclusions from the voices of service providers on the efficiency of the understanding in relation to the protection of sex trafficked victims. I did not have an access to the MOU, I had access to criteria related to the MOU from the opinions of service providers. The memorandum of understanding is described in this chapter, via visualising the sheltering services and options that are available in Jordan.

⁸⁴³ See Fairclough, above n 842; and Reisigl and Wodak, above in 184, 90.

⁸⁴⁴ Ibid.

According to the service provider participants, three kinds of shelters provided services for women facing gender-based violence or trafficking, in cooperation with and facilitation from the Jordanian Government as shown in Figure 7-1: a domestic family violence shelter, a human trafficking shelter and a Women’s Association. All three shelters proceed with the government’s protection. They do not collaborate with each other. However, the three shelters’ relationship is complementary to protect women from violence, including trafficking.

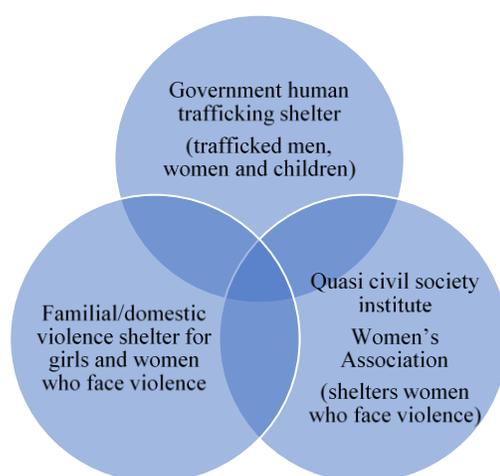


Figure 7-1 The three shelters that operate with government – they receive victims who are rescued and have agreed to complain against their offenders

NGOs and legal clinics – except UN offices – rarely shelter sex trafficked and sexually exploited victims. If NGOs identify a victim, they have two solutions: if the victim agrees to lodge an official complaint against the perpetrator they refer the victim to the Counter Trafficking Unit (CTU); if the female prefers not to report the violation to the police, they report the case to the CTU. Even if they want to help the victim, it might be challenging and difficult. [Rawan](#) told me that she tried servicing a sexually exploited victim and to identify the perpetrators, but she did not succeed.

The formed protection is dialectical, in terms of its intertextualisation in Jordan. The social formation of sex trafficking protection was constituted and constituting the social institution of criminal justice system, the social development scheme and the social justice approach in Jordan. Figure 7–2 depicts the social institution processes in relation to the studied social formation in Jordan and represents the relationship of the offices with each other. The public security directorate provided a power position that affects the discourse on sex trafficking crimes as much as the JPC did. However, one of the parties involved representing the powers of the state is the Ministry of Social and Economic Development. The public security directorate had a more powerful determiner than the MSED.

The public security directorate provides an important signifier for the discourse on trafficking, sexual exploitation, exploitation of prostitution and sex work, and on the ‘speech community’.⁸⁴⁵ The administration of the public security directorate has different departments such as the Criminal Investigations Department (CID), which includes the CTU, and the Family Protection Department.

⁸⁴⁵ Fairclough, above n 171, 38.

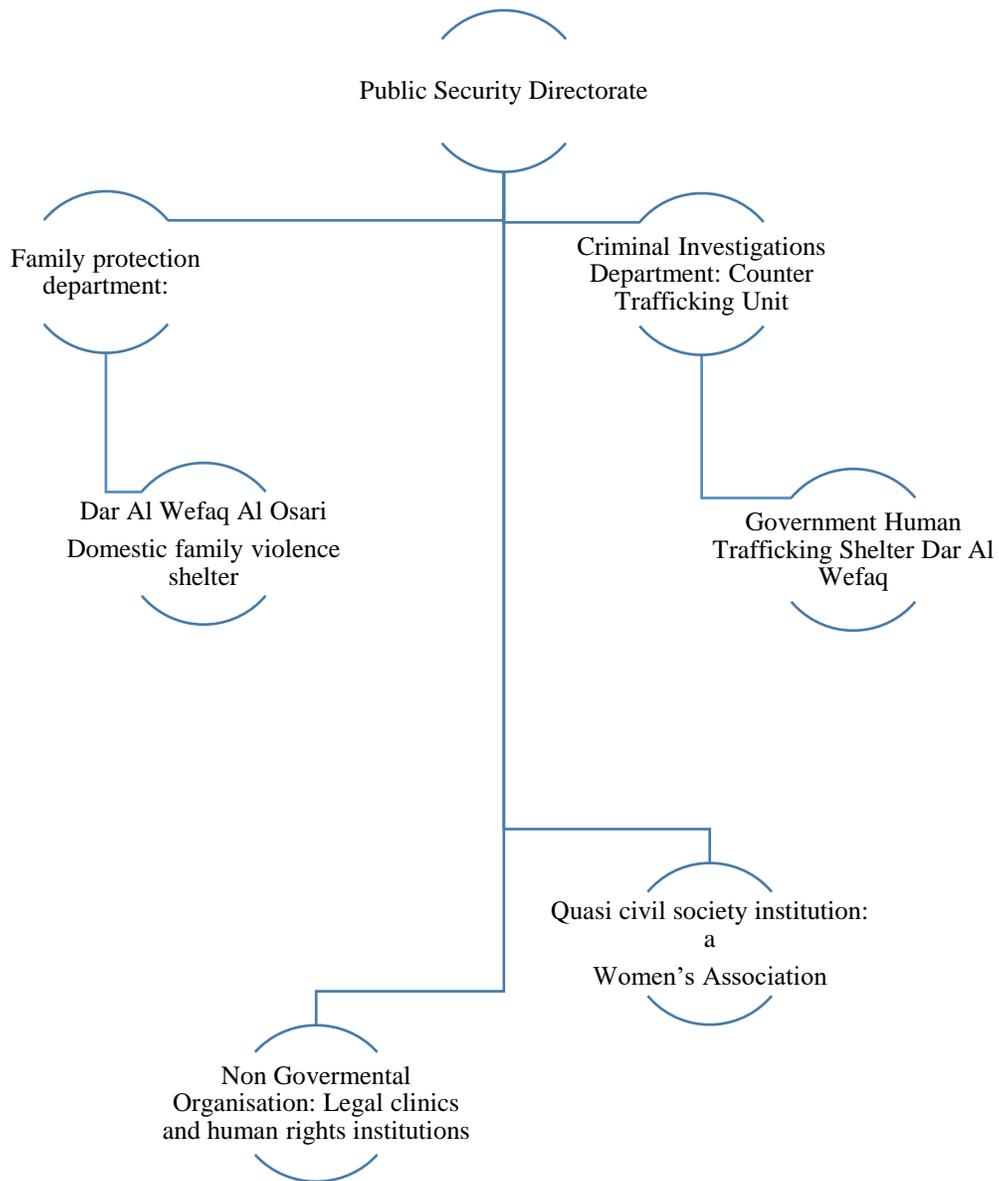


Figure 7-2 The dialectical-relational process of social institution of criminal justice in Jordan in regards to protecting females facing sexual violence

The CTU plays a basic role as a major government contact for institutions providing services for sex trafficked victims. I consider the CTU to have taken a basic role given its powerful position and closeness to the government. The alignment provides a power position, which affects the

style of service provision in both government and NGO' shelters. Rawan explained how it was hard to provide services for a victim who does not want to lodge a complaint to police against her perpetrator.

In the following, I explain the relationship and interactions among several parties with the Public Security Directorate (PSD): The PSD with government shelters, the PSD with NGOs and legal clinics that offer services, amenities and sheltering options, and the PSD with the Women's Association.

(a) *Public security directorate and government shelters*

According to the participants, service providers cooperate with the CTU by reporting potential trafficking incidents. In addition, the service providers consult with the CTU in protecting the sex trafficked victims or in providing the essential health, psychological and social care that might be needed for each victim. For instance, the government shelters (including the human trafficking shelter and the domestic violence shelter) receive victims referred by the CTU. As a result, the women received in both shelters are ultimately those who decide to lodge a complaint to the prosecutor (police) against the offender(s). Nonetheless, both shelters do not get in direct contact with potential victims. They do not have a victim identification strategy; they operate as shelters, which are unconnected with the society. The shelters operate under instructions given by the CID\CTU. As shown below in Figure 7–3, government shelters provide amenities and services for victims who are transferred (referred to) by the criminal justice system. This results in having a discourse in the shelters that is constituted (controlled) in accordance with the criminal justice approach to the victims.

During field work, I had networking opportunities with the domestic violence shelter, the shelter was more like a prison. It had high walls and windows with metal bars and mesh. The shelter was protected and guarded, and my entry to the shelter required approval from the shelter's directors. This shelter received cases of sex trafficked victims until November 2015. The shelter used to harbour victims of sex trafficking, in addition to females fleeing from gendered - domestic family violence.

When I took a taxi to the domestic violence shelter, I was driven for more than half an hour, roaming around in circles to find the shelter. I asked the local people for directions using the name of the shelter, but everyone seemed surprised because they did not know of any shelter in the area. At the last minute, I rephrased my question with: 'Do you know where the female prison is?' The locals' bafflement evaporated and they pointed me in the right direction. The use of language by the locals reinforces negative attitudes to sex-trafficked victims sheltered from their abusers. The locals in the society did not know of any shelter in the area, even those locals at vegetable-kiosks that by chance turned out to be next to the shelter. Any person who sees the shelter for the first time could think that it is a prison. This is also pointed in the below figure 7–3.

The government did not consider it a prison. One service provider explained to me how the names of centres for women have changed and the provision of support services for women have been developed. For instance, he says:

In the past we used the word prison. It has been renamed as reform and rehabilitation: a change in the name and the content. With regard to sexual exploitation, the shelter provides victims with the necessary privacy, and a safe place to rehabilitate and ensure that they are not trafficked again.

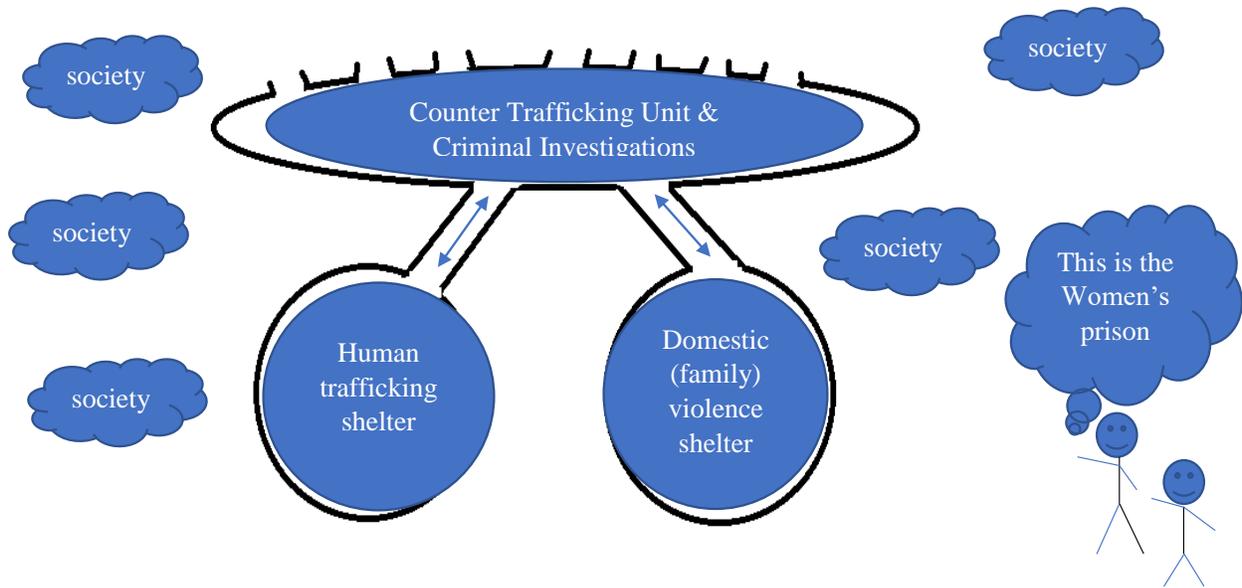


Figure 7-3 The relationship between the shelters and the criminal justice system plus society's conception of the domestic violence shelter

However, the shelter is not completely isolated from the society; the people who work in the shelter are part of the Jordanian society, as I observed. This is due to not having any direct rescue-mechanisms.

Before November 2015, the domestic violence shelter used to harbour sex trafficked females along with other female victims of gender-based violence. When the new human trafficking shelter opened in November 2015, the domestic violence shelter stopped receiving sex trafficking victims. I asked one of the government service providers what happens if a victim at The domestic violence shelter was rescued on the grounds of gender-based domestic violence and later they discover that the female has confronted sex trafficking. They explained that victims could no longer stay at this shelter if it turns out that she is a victim of sex trafficking or sexual exploitation.

I also asked Radiya whether she agreed with the policy of separating the sex trafficked victims from domestic family violence victims. She responded:

Yes, of course. There should be a separation between the shelters. It is not wise to locate both victims in the same shelter; because the victim that is sexually exploited for the purpose of prostitution or profit differs from cases of domestic family violence. It does happen that sometimes the case is categorised as a case of domestic family violence, then to later discover that the female had been sexually exploited. In this scenario, the victim would be transferred for the human trafficking shelter '*dar al etjar bel bashar*'.

Radiya explained to me that she believed that it is not right to shelter both categories of females in the same shelter. She explained:

We recommend that there should be separation between victims according to their age. Therefore, we consider separating the cases of domestic violence from sex trafficking as a vital strategy. A victim who experiences sex trafficking is considered to have expertise and knowledge, regardless of whether she had consent or not of having sex. This victim may transfer her knowledge to other victims. Hypothetically, a domestic violence victim may confide or complain to another victim who had been sex trafficked, and the sex trafficked victim may offer her taking a phone number of a pimp and deceive her by telling her: call this number, this person may help you and solve your problems.

She also explained the other reason why they believe in separating the sex trafficked females from domestic violence females:

The domestic violence shelter, separates the single *banat* from the married victims, and sometimes classifies a victim as a case of emergency until they get to understand what her case is, and study her behaviours and manners. That is, to decide whether she should be merged with other cases, or whether she should be separated from other victims. Therefore, we cannot merge cases of domestic violence with sex trafficking. Understand the idea? [Smile] this would be a wrong thing to do. If we merge them together we do not help them, instead we are helping them to find a way around this. Meaning, I contribute in their deviance.

The fact that female victims are referred to as ‘deviant’ is related to the discourse on ‘whores and Madonnas’. A female victim is categorised as immoral and dangerous; this stereotyping is a result of suspicion of the morals of the victim. In addition, she is considered to have affiliations with her trafficking perpetrator. Although she is in a shelter following her complaint to the prosecutor, she is still treated as a suspect.

However, I understand from Radyia that the domestic violence shelter may harbour victims referred to them as cases of family violence. However, the victim may prefer to lodge a complaint about domestic violence only, though she might have endured forms of sexual exploitation from her family. She explained that they leave this matter in the hands of the female if she would like to keep the complaint of domestic violence only. However, the shelter only harbours the victim as long as there is a formal domestic violence complaint. I understand that some victims may face both domestic violence and forms of sex trafficking.

I interviewed government service providers. They avoided the use of language relating to sex trafficking. They preferred to use the word trafficking by itself. During the interviews, I kept referring to sex trafficking and sexual exploitation as terms to be used during each interview to maintain the discourse on sex trafficking crimes. I understand the discomfort of using the word ‘sex’ during the interviews.

(b) Public security directorate and NGOs

The relationship between the CTU and NGOs differs from the previously explained relationship. As I concluded from the speaking with both [Rawan](#) and [Majida](#), NGOs receive sex trafficked females who do not wish to raise a claim against their perpetrator, but are either seeking ‘safe harbour’ or services and amenities. The discourse among NGO service providers is independent

from the Jordanian criminal justice system or government service providers. NGO participants had more courage to criticise the government, the law or the criminal justice system, more than workers from the government or the Women’s Association. However, it is important to note that due to the ‘memorandum of understanding (MOU) among the society of service providers, which included government agencies and NGOs, the NGO service providers tend to report the cases of sex trafficking or potential sex trafficking to the government if the victims were not rescued.

The Jordanian Women’s Association: a powerful platform as a basis for their work

Figure 7-4 summarises the relationships between the Women’s Associations, the NGOs, the Legal Clinic and the referral system of the CTU, the CID and the Police with the presence of the society alongside each of these relationships.

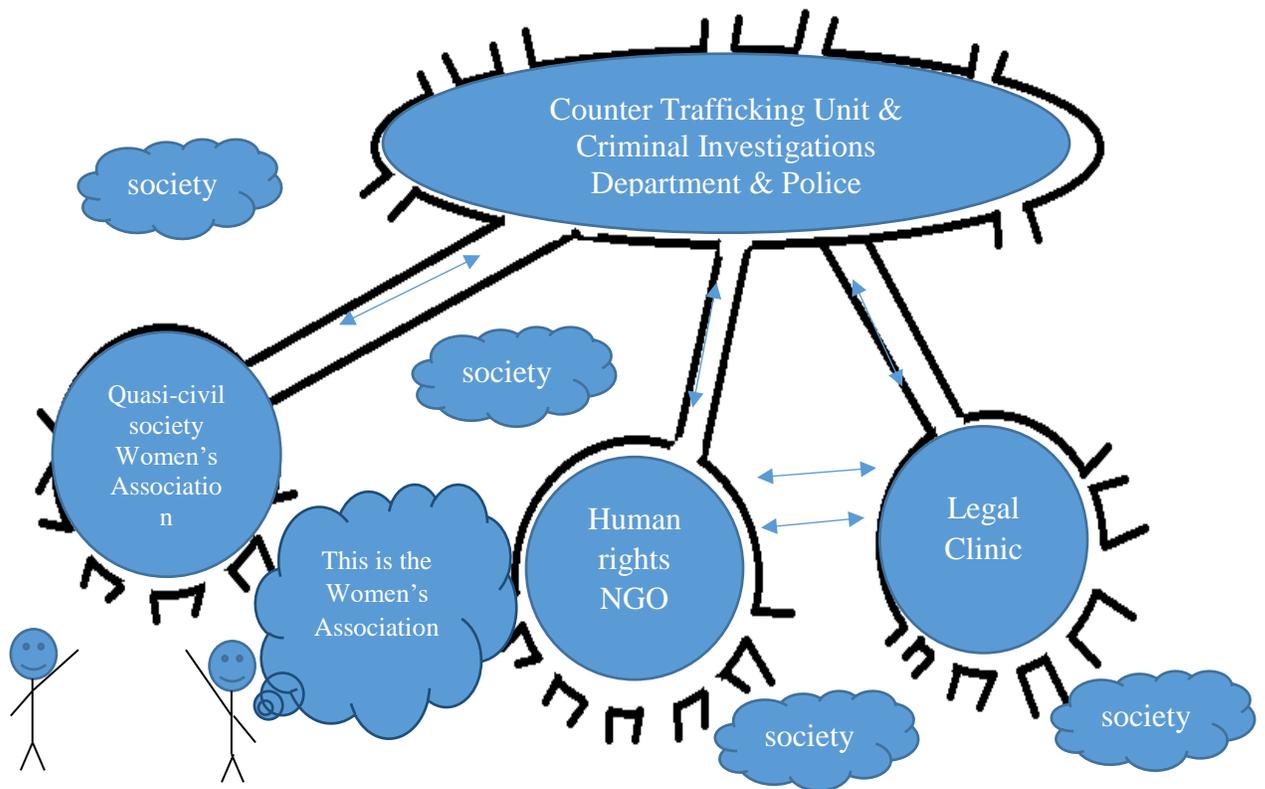


Figure 7-4 The relationship between the NGO shelters and the criminal justice system, and the society’s closeness to the Women’s Association

I interviewed service provider participants from the Women's Association, regarding the discourse they use, their role within the criminal justice system, and the level of their strength and position within the national social and criminal justice scheme. For instance, the location of the Association was in an area that is considered to be close to the city centre and to the populations living in Amman. This Women's Association had government support. This Association was founded with the support of the government and they have a strong connection with the government; however, the staff of this Association described it as a 'civil society institution', although it is a quasi non-governmental institution.

The Women's Association cannot provide services for victims fleeing from sex traffickers unless they raise complaints to the prosecutor. Women who do not show any willingness to leave the sex trade industry cannot get any kind of service unless they agree to lodge a complaint to the prosecutor or to *hemayet al osra* (Family Protection Department). Majida said:

When it comes to the legal status, since she did not put a claim against the offender and she agrees to do this profession without her individual consent. Not under coercion or any pressure; meaning from her own personal freedom, then nobody can force her to put in a claim or to stop working in nightclub. I cannot force her to report a claim to the police. We cannot interfere in this scenario; neither can the Counter Trafficking Unit. This is a matter of freedom of choice of the case (the female).

Before establishing the human trafficking shelter, the Women's Association used to receive rescued victims from the CTU to provide them with health, social, psychological and other services in addition to sheltering services. This Association is open to the public, unlike the government shelters, which receive victims referred to them by the CTU or CID.

Looking for the Women's Association to interview the participants was not hard. It was easy to locate them and ask locals for directions to find them. The fact that it was easy to locate them took my attention as this is a sign that they are an accessible sheltering option for the victims of

sex trafficking. As mentioned before, they do require the victims to raise a claim to the prosecutor to provide them with services. The justice options provided within their shelter are part of the formal criminal justice system. Though they have a hotline and easy access to the public, they do not help the victims unless they make their cases into an official lodged complaint. I found that the participants used positive language when referring to the government. At the same time, they criticised the government, the social structure and gender-based discrimination.

However, as explained by Mohammad, before establishing the CTU, the CID collaborated with the Women's Association by harbouring women who suffered gender-based violence, domestic violence or any other form of exploitation. I understand that this Association had a transitional role before issuing a governmental human-trafficking shelter. In the meantime, when victims of trafficking are identified by the CTU, they are referred to the governmental human trafficking shelter. During the fieldwork, the Women's Association remained as a party involved in the memorandum of understanding and a division that receives and identifies potential victims of trafficking.

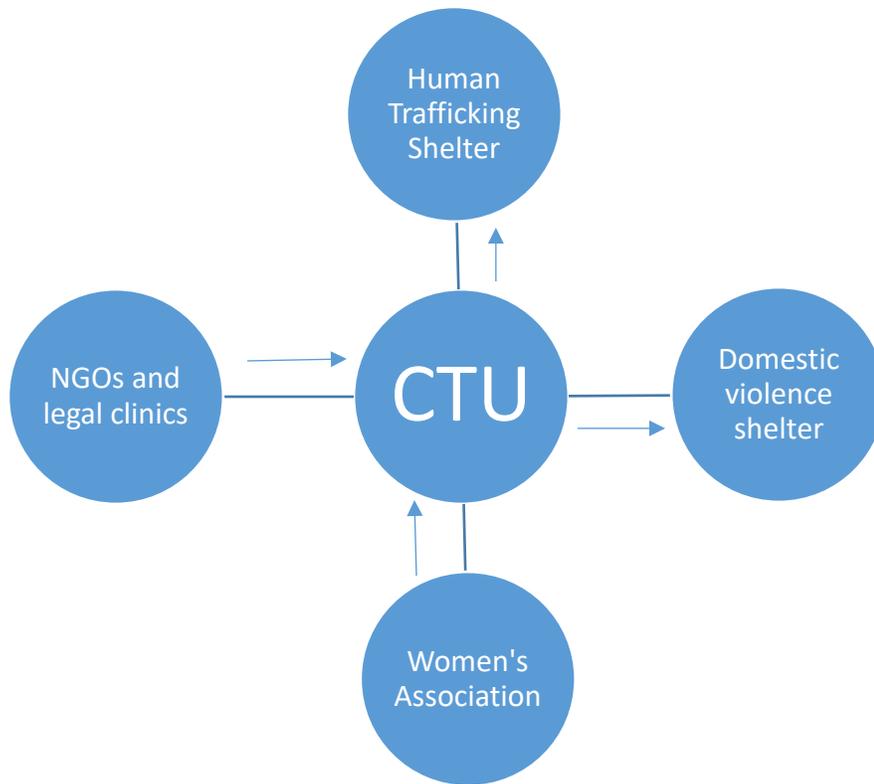


Figure 7-5 transferring and transportation of rescued victims after establishing the government human trafficking shelter. The arrows resemble the direction of the victims' transfer and transportation.

The rescued victims represented by the interactions shown in Figure 7-5 agreed to lodge a formal complaint. The figure shows the flow of the victims and the system of transferring the victims among the organisations and sheltering offices. Clearly, transferring and referring victims is administered by the CTU, in case the victim was convinced to lodge a complaint. The arrows in Figure 7–5 show that the government shelters receive the victims of sex trafficking that are classified as rescued victims. The fact that government service providers have only serviced rescued victims influence their understanding of the issue of sex trafficking. Moreover, NGOs and Women’s Association have a different understanding of sex trafficking due to their direct contact with females who prefer not to be rescued or do not want to lodge a complaint. This shelter had a victim identification strategy, unlike the government shelters.

Though the victims of trafficking or domestic violence are transferred to government shelters by CID, the staff members of the shelters belong to the administrative hierarchy of the Ministry of Social and Economic Development (MSED).

Regional Plan for combating trafficking

Mohammad explained to me that Jordan has implemented programs to combat human trafficking from a regional perspective including discussion at the MENA region level: the drafting of a regional Bill and cooperation in transferring a female back to her country.

Majida explained the regional project that was concluded between Jordan, Egypt and Morocco. This collaboration resulted in developing mutual collaboration and service provision among the civil society institutions in both countries. Majida explains:

On this basis was our networking between the civil societies' institutions on a transnational basis, so, as a result there, is a shelter in Egypt. So we transfer and refer the Egyptian victims to the shelter in Egypt, on this basis, as you know, not all of the victims live in Cairo, so sometimes she wants to travel by train from Cairo to return to her family, so we help her in arriving home.

Speaking of Morocco again, we had a networking plan with civil society institutions in Morocco. And a shelter for women in Morocco was established as a result. So as to network with the rescued victim via this institution ...

Within the offered regional and local protection plan, it is crucial to elaborate on the offered protection within Jordan. The matter of repatriation of immigrant victims is interrelated with the provided protection, therefore, I will relate to it within the following paragraphs as part of protection provided by Jordan.

Current Protections

According to the service provider participants, the protection provided for the victims is not adequate. During the interview in July 2015, Rawan spoke of a sex trafficked victim she had dealt with recently who did not get adequate protection from the criminal justice system:

I mean, a case that I dealt with lately who had a mental disorder; so when I was providing her with services, dealing with her was hard for me, because I am not experienced with mental disorders. This female was in need for sheltering services; her family abandoned her. Therefore, she wanted me to provide her with a temporary sheltering services. Though she wanted to have a short-term harbour, I noticed that she needed extensive care, which is more than what I have provided for her. Because I am not specialised in cases of a woman that has a mental disorder. Due to this mental disorder, she practices this kind of work. In fact, it is more likely as one of the reasons for her to become a victim of sexual exploitation because of her situation. After I followed up with the hospital, I referred her to a doctor, but the hospital refused to provide her with accommodation.

She explained to me how she was prevented from providing the victims with services. I understand how NGOs did not have the logistics or a powerful strategy to service victims unless they contact the CTU.

Although Mohammad told me that cases of exploitation are considered as cases of trafficking not as cases of prostitution, Rawan's story was different:

The situation was very critical; every time I provide her with services and try to stop the scenario where she would be sexually exploited again, she continues to be exploited. I have even tried to know who the persons who exploit her. Now when the security centres deal with her case, they deal with it as a case of *da'ara* [prostitution]; they do not deal with her kind of case as a crime of human trafficking. You know that *da'ara* is not criminalised under the law; the law only criminalises the administration of '*Dar-al-Baghaa*' [brothels] not the *da'ara* by itself. I am surprised! So, these cases are referred to the mayor. He proceeds with a resolution of administrative detention. In this scenario, the '*bint*' would either be a victim of sexual exploitation, or she would be an offender who has a partner with whom she was administrating the brothel or sex trafficking. The male-partner who is conducting the crime with the woman is absent in the case. Where is the other male person who is involved as an offender in this crime? We cannot combat the sexual exploitation of women without penalising the men that are practising exploitation. As a consequence to this dilemma, all of us, who work collectively to combat this crime, focus on the women, themselves. This will never solve a problem.

The discussion of the protection of the victims cannot be done in isolation from the gaps in article 12(a) in the HTL, which provides the ‘right to order’ the exemption of punishment to the prosecutor regardless of the JPC or other laws. As explained in previous sections, the power of the JPC affects the discourse and actions taken by the administration and government sectors. Rawan’s story addressed the issue of whether the JPC is affecting the constitution of the criminal justice approach to sex trafficking victims in Jordan. This shows that practices and texts are part of the discourse that impedes the protection of victims of sex trafficking and exploited sex workers in Jordan.

According to the previous section, as quoted above from Rawan, a hospital refused to admit the female victim as a patient in their hospital. This raises the question of responsibility of health departments and public hospitals, and their obligations in providing access to females who are not classified as victims, knowing that the majority of victims prefer not to identify themselves as victims, as told by Mohammad.

I also consider the refusal of the hospital administration to admit her to the hospital was possibly due to cultural reasons, or sex trafficking, and the JPC. The refusal of admission by the hospital might have been a social action that was a result of the social institution and social formation, which consider the sex trafficked or sex workers as involved in immoral practices and unlawful conduct.

Rawan also says:

The problem is that in Jordan we lack *psycho-social* services. This deficiency is critical in all levels, because of the services that are provided, the organisations, the government, the private sector. This lack of psycho-social services cannot help in providing and understanding the libidinous syndrome, which those women suffer

from. When a women wants to practice certain sexual intercourse ... we as a society cannot understand how to classify these cases, whether it is a case of mental disorder or not. We do not have the awareness even between the organisations in Jordan. And we do not have counselling service providers who can provide beneficial services.

Rawan admitted how the service providers lacked expertise in providing psychological care for the victims. I suggest that the lack of expertise is due to perceptions of sex trafficking and sex work, which was constructed according to the participants' context; their context is an *oeuvre* of traditions, ideology, legal texts, practices of other service providers and historical backgrounds.

Legal clinics and NGOs have taken part in the collaboration and the signing of the memorandum of understanding that was agreed upon with the Jordanian Government. According to [Rawan](#), they report cases of sex trafficking to the CTU as a method of policing. Nonetheless, Rawan faced an impediment, which did not allow her to provide services to one of the victims. This was due to the victim's refusal to lodge a complaint to the prosecutor. NGOs cannot provide sheltering services, which empower the victims, unless the victim agrees to lodge a complaint to the prosecutor and cooperate with the CTU.

Rawan says:

Me and my colleague had two cases of trafficking, which we had to report to the Counter Trafficking Unit. Though we have provided general information to the Counter Trafficking Unit, the females refused to submit a criminal complaint to the Unit. Therefore, we did not want to report this just for the benefit of the female who submitted a claim to us. The general problem is that the victims change their affidavits. Sometimes you report her affidavit to the police, then the female suddenly changes her words. This shows that there is a lack in the protection provided.

In this example, the NGO participants explain the cases without any hesitation in criticising the role of the government. However, they report the cases to the CTU in accordance with the memorandum of collaboration among the service provision shelters and organisations in Jordan.

I understand from Mohammad that the CTU staff are seen as civilian-dressed police officers or undercover cops as they take advantage from the transparency and cooperation with NGOs or the exchange of information as a method to collect information, and investigate and identify the victims.

For instance, two participants, Randa and Rawan, expressed similar comments about the persuasive authority that they have as NGOs in providing support services to sex trafficked women. For instance, when I asked Randa whether they link the cases they receive with how to suggest amending the laws, she answered:

We do not link the receipted cases with the issue of how we suggest the amendment of laws. We actually suggest amendments according to the actual application of the law, for instance, the challenges, which arise before and after judicial litigations. We find gaps that arise from litigation.

Randa said that they only provide persuasive authority for the government by reporting cases, in which the Government is obliged to proceed with a 'due process'. She used the same terminology Rawan used: 'the actual application of the law'. I asked Rawan about her recommendation for a legal reform. She answered:

We should start with implementing the law. The law does provide protections but they are not implemented. Like the enforcement of exemption of punishment in case the female was a victim of sex trafficking.

NGOs are reporting non-compliance with the law. I understand that they do not make use of each case to require amendment of the laws as part of the memorandum of agreement. However, they collaborate in drafting a Bill and amendments to HTL in the MENA region with regional NGOs providing services for victims in other Arab countries. Randa and Rawan reflect the positive image of the law; and the negative image about non-application of the law.

Two government shelters provide services and amenities for the female victims of sexual crimes and gender-based violence, as explained previously. However, they do not provide services for the victims unless they were transferred to the shelters by the CTU; in addition, the victim must lodge a complaint about being harmed by trafficking. The fact that the services and amenities at government shelters are better than the servicing and protection provided by the NGO make it a 'dream' option that is only obstructed by the challenge of having to be transferred by the government after lodging an official complaint against the perpetrator. The benefit of NGOs is that the victim might be supported but the protection cannot be guaranteed unless she is willing to lodge a complaint. Rawan explained to me that she tried supporting a victim of sex trafficking who was not willing to complain so her services and protection were unsuccessful.

According to [Nawal](#), the victims are sometimes offered protective detention for prolonged periods. I understand from her that this is done for the victim's protection. Nawal said:

Yes, the law should protect the victims by providing them with easy access shelters instead of placing restraint orders on the victim; the law should provide the options of directing her to shelters. We do have shelters, but she should not stay in the shelter for the rest of her life.

They could have applied the international rule of necessity and proportionality; however, witness protection programs are not sought. Nawal says:

There should be a systematic witness protection program because the victim might be at risk from her family, or from the society. Of course there are things that can be done, changing her name, changing her appearance, to get her involved in another field that may protect her. There are a lot of alternatives. In case, she has to stay in the shelter for a prolonged time, the shelters should be competent, enabling her to live a decent life without stigma, without bearing the complications of a sin that she is not responsible of doing.

Residency of the victim in Jordan as a destination country and their repatriation were briefly discussed in the interviews; however, for both Randa and Majida, residency of the victim is an issue that requires policy change to provide protection for the victims.

Majida explained the matter of repatriation of the victims of sex trafficking, but did not discuss residency options for immigrant victims. Majida says:

There is a regional project between the mentioned countries Egypt, Morocco and Jordan; so this project helped us in networking; with whom it helped us network in the regional project? And the answer is Civil Society Institutions in Egypt; now, when it comes to these civil society institutions in Egypt, when a 'case' pops from our institution we contact them, and tell them about the case. In addition, we give the victim the contact details and number of the institution in Egypt, so that if something happened to her while she is there, she would ask them to help her in her country.

In one of the stories, an immigrant female victim was rescued in Jordan by one of the service providers. The service providers are careful in returning the victim to her country due to the loss of her honour in the eyes of the family. Majida said:

So as to network with the rescued victim via this institution, which visits the family, in order to follow up with the rescued victim, because sometimes the family may kill her because she faced wrongdoing. They would not understand that she was forced to do this or that she was raped. They sometimes may interpret what happened to her by suggesting that '*mamshaha sayar mish kwayess*' [her path was not a straight one anymore].⁸⁴⁶ They may kill her or slaughter her. To protect this victim, we started following up this case (female) through this institution (civil society institution) that existed in her national country, and make sure that the family/parents are informed about what happened to the victim before her arrival back to her country, meaning that the victim faced ... one, two three '*wa'had tenen talateh*' to prepare them mentally to accepting this '*bint*' girl\woman. This is concerning how this woman come here and how the recruitment is done in Jordan, what happens for them in Jordan, how they rehabilitate them and how they merge them in their home societies.

⁸⁴⁶ As her path is not straight anymore, this means that she started doing immoral things that resulted in her attraction to committing sexual behaviours.

The protection plan in Jordan, for immigrant women, was based on harbouring the victims, providing them with services and assuring their safe return to their countries. However, giving a right of permanent residency for the victims in Jordan was not guaranteed under the law. The regional alignment with Arab countries was on the basis of offering them a smooth and easy return to their countries. What if the family were extremely conservative to the extent that they would rather kill her? The victim might decide to continue performing this job underground to avoid forcing her to return home. This is not to say that all foreign trafficking females were returned to their countries as treatment differs according to the nationality of the victim. For instance, Syrians may have the right to permanently reside in Jordan. A regional arrangement, which may provide victims with the possibility of residing in the country where they were trafficked, might encourage the victims to access justice and service provision.

According to Randa, foreign victims do not get temporary residency in Jordan. Randa says:

We find gaps that arise from litigation; an example of a challenge is the matter of residency. The victims do not receive a temporary residency, and this is an obstruction for justice. It impedes the progress of the claim, and obstructs the victim from claiming her rights.

In light of the offered protection scheme in Jordan, I included the participants' opinions regarding the question: which form of regulation is considered appropriate for a legal reform in Jordan: abolition, legalisation or decriminalisation?

Service Providers: Abolition or Regulation?

I explained to the service provider participants the main models of abolition and regulation of sex work. I asked them, 'Which model would you prefer if you were to influence legal reform in Jordan?' Their answers differed. [Randa](#) was the only service provider participant who thought that regulation of sex work would be the proper legal reform for Jordan. However, [Rawan](#)

considered that a temporary regulation of sex work is essential; she was against the regulation of sex work, but thought that it is an important step at this time. [Nawal](#) and [Radiya](#) agreed with the abolition model. Radiya said that the abolition model is closer to and more appropriate for the conservative nature of the Jordanian society. Some of the comments are shown in Figure 7-6.

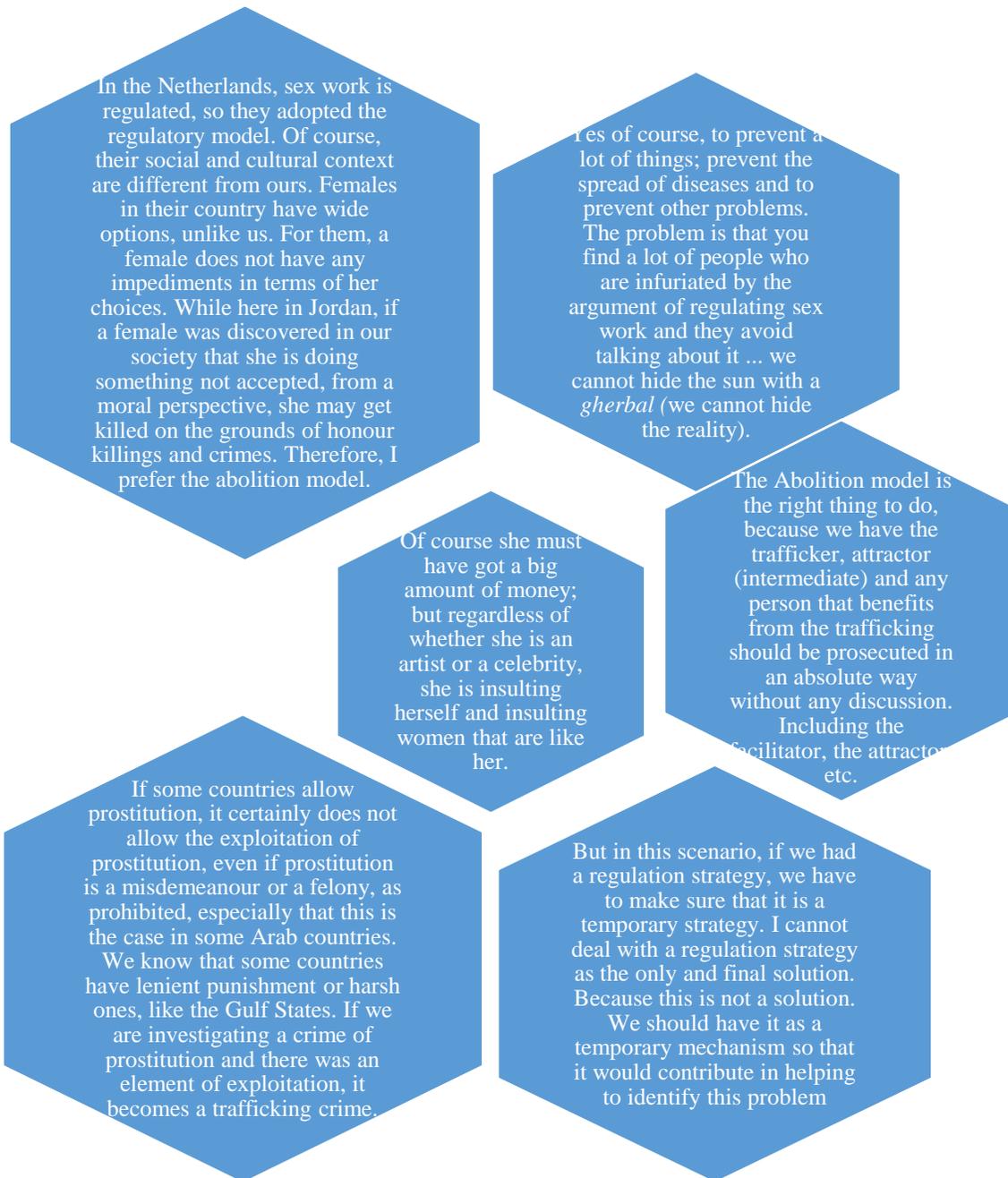


Figure 7-6 Participants' comments on the debate: abolition or regulation of sex work in Jordan

[Mohammad](#) commented on this matter from a different perspective. He thought that as long as there is exploitation in the act, it is a trafficking case. He implicitly said that each jurisdiction has their own treatment of prostitution as long as the definition of human trafficking complies with the *Trafficking Protocol* (2000) definition.

Mohammad says:

The Jordanian legislator focused on the subjects of the crime, which is people. Therefore, in trafficking crimes, the criminal justice system focuses on the procedures of protecting the harmed persons. The distinction between trafficking crimes and other crimes is that in trafficking, it includes exploitation. Since we have the duty to enforce the law, as a department for enforcement, we investigate the case of exploitation to sort it.

If some countries allow prostitution, it certainly does not allow the exploitation of prostitution, even if prostitution is a misdemeanour or a felony, as prohibited, especially that this is the case in some Arab countries. We know that some countries have lenient punishment or harsh one, like the Gulf States. If we are investigating a crime of prostitution and there was an element of exploitation, it becomes a trafficking crime. The Jordanian legislator has chosen to define trafficking similarly with the definition of the protocol. In the definition, the Jordanian legislature criminalised around six forms of exploitation. In the Trafficking Protocol, the forms of exploitation are mentioned as examples, while in the Jordanian Human Trafficking Legislation, it is mentioned in an exclusive manner, since we follow the principle of criminology, which says: ‘no penalty without a law’.

The focus of Mohammad was on the *Trafficking Protocol* (2000) and its obligations. He did not focus on the context of Jordan and what appropriate legal reform he would think is appropriate for dealing with sex work.

Rawan thinks that we have to consider the society when proposing a reform. She had participated in a sex work debate held in a workshop in the Netherlands. She also said that she considers the exploitation of the prostitution of others a form of trafficking in human organs. She says:

Sex work is what I call the trafficking in organs of women when a man gets sex in return for money. If the sex was not for return of money then this is a matter of freedom. Now, some countries follow these justifications. I have travelled to the Netherlands, and to Amsterdam and other cities in Netherlands, where they explained for us this dilemma. You have to take the society into consideration when deciding this. When you want to solve the problem of sex trafficking, you have to consider mechanisms that would encourage informing the police; and strategies that would take the society into consideration. This means that I could do some kind of a strategy that would help in discovering sex trafficking crimes, like issuing permits and requiring regular health checks and some sort of clearance that is required so that at least I can guarantee that STDs do not spread.

Rawan explained that regulating sex work might help in identifying the victims of sex trafficking and prevent the spread of sexually transmitted diseases (STDs). She says:

Because regulation is a practice that exists, it is considered to be part of the economics of the country. But in this scenario, if we would have regulation strategy, we have to make sure that it is a temporary strategy. I cannot deal with a regulation strategy as the only and final solution because this is not a solution. We should have it as a temporary mechanism so that it would contribute in identifying this problem. For, instance, how many females practice sex work? We need to obstruct the spread of diseases. In the same time we use this strategy to find out who pays money for sex from females so that I can hold him liable, regardless of the gender the customer asks for. Do not forget that the worse scenario in the business is the case of purchasing sex from a child. Trafficking the child for sex is the worst crime.

However, Rawan thought that regulation should be a temporary strategy. She says:

As I told you in terms of the strategies for regulating sex, I agree with these strategies but I think that those strategies should be temporary. As a similar case, the women's quota⁸⁴⁷ which is provided in the law enables a temporary strategy⁸⁴⁸ until women become more involved in decision making.

Therefore, this strategy will help in controlling the disease and limiting the size of the problem. So I regulate the industry and design procedures to contain the problem; but only for a temporary transitional phase. How do I make it temporary? By prosecuting

⁸⁴⁷ Women's Reservation Bill: the requirement to have a number of seats reserved for women in the executive and parliament houses.

⁸⁴⁸ To enhance the participation of women in the public sphere.

all of the men who request sex in return for money; or prosecuting all of the persons who look for this commodity. I am against building the economics of countries upon this trade because this the biggest humiliation for the woman and the entire humanity.

Radiya believes that applying abolition model could be beneficial, as it is vital to suit the needs of Jordan's conservative social and cultural context. Radiya believes in the need to provide sex workers, who do not have any other job, the option to exit sex work. Radiya said:

I think that applying the abolition model in Jordan would be beneficial. It is closer to being accepted in Jordan, especially which we have to take our traditions, our norms and our religion into consideration for a successful legal reform. This must happen especially if our society rejects the idea of legalising sex work under any condition, whatever it is. Therefore, I envision the applicability of the abolition model. This model may help in limiting the number of cases, but we have to be careful because this model should provide effective subsidiary solutions. So a female who earns money from sex work and considers this job her only source of financial stability should be offered effective choices that help in supporting her financial dependency and survival. We need to give her solutions that will give her financial dependency and dignity, and will preserve her honour; in addition to providing protection and safety. So, we need to regulate this issue in a way that it would suit our social and cultural context.

Radiya, commenting on the Netherlands, said that their social context was more accepting of a woman practising sex work than in Jordan. She justified the hardship of applying the regulation of sex work in Jordan due to the risk of becoming a victim of an honour killing:

In November 2015, we had a workshop trip to the Netherlands, where they told us that in the Netherlands sex work is regulated; so they adopted regulatory model. Of course, because their social and cultural context is different from ours. Females in their country have wide options, unlike us. For them, a female does not have any impediments about her choices. While here in Jordan, if a female was discovered in our society that she is doing something not accepted, from a moral perspective, she may get killed on the grounds of honour killings and crimes. Therefore, I prefer that the abolition model gets applied. However, I need to give these females substitutes and solutions if we apply this model.

Randa said that regulating sex work is a suitable option. She was the only person who believed that sex work should be regulated. She explained how she has arguments with people about this view. She also said that people ignore the fact that sex work exists and that it cannot be abolished. She says:

Yes of course it must be regulated to prevent a lot of things; prevent the spread of diseases and to prevent other problems. The problem is that you find a lot of people who are infuriated by the argument of regulating sex work and they avoid talking about it. They even fight you if you say this. But I say that ‘*Elshams btetghattash be gherbal*’ [we cannot hide the sun with a *gherbal*⁸⁴⁹].⁸⁵⁰ Because it is here everywhere, in all societies. Neither did it cease in the past, nor will it ever cease to exist; because it is one of the oldest professions in the history of humankind. Therefore, why should we close our eyes away from it? Why should we pretend that it does not exist in our society?

[Dalal](#) did not explicitly answer the question; however, she explained that she is against the selling of sex:

When you use the word commodity, or sexual commodity, you reminded me of an advertisement in one of the European countries of a brand watch. The advertised posters were very big, the size of this wall or the whole building; and the posters were spread in the streets and in the public. The advertisement was for a watch, which was worn by a naked woman. Now everyone is asking: ‘since when is the body of the woman an advertising instrument’? This use by itself is a crime. Is this a trade or not? Of course she must have got a big amount of money; but regardless of whether she is an artist or a celebrity, she is insulting herself and insulting the women like her. My body is not a commodity to be presented. So this is a kind of a trade.

Dalal criticised the cultural change and the changing standards of manhood. She also explained to me that the JPC should be analysed to understand what is happening in Jordan. She had radical views about how women should never be weak or vulnerable. She explained how the society

⁸⁴⁹ A *gherbal* is a kitchen implement used to sort big grains from smaller grains. For sorting, it depends on a mesh-based container. The saying is built on the assumption that if we face the mesh towards the sun it will not stop the sunrays from coming through.

⁸⁵⁰ It means that we cannot hide and ignore the obvious truth.

constructs women to become dependent on men to survive. However, her views on sex trafficking and sex work are distinct from the views of other participants. She is implicitly against the regulation of sex work, but she did not express that explicitly. She explained to me how she is against the use of women's bodies as a commodity, and how she considered women to have an obligation to work and become financially independent to become autonomous.

The sex work debate was raised in a workshop in the Netherlands in which some of the participants have participated. Their exposure to the discussion of the sex work debate before I interview them is a significant matter that should be raised as it resulted in having deep thought form participants on this issue in light of the Jordanian context. The participants worked together and have structured a small society where they exchange information with the government, among themselves, with society, and with violated women. However, their conversations have been influenced by power positions and social practices, and miscommunications in some instances. The participants suggested the impact of governmental policing on different intersecting matters, which include sex trafficking, sex work and women in Jordan, in a cultural context.

C Summary

In this chapter, and the previous Chapters V and VI, I have focused on three sources of influences [determination]. The first was attitudes of people in Jordan to sex trafficking, sex work and gender based violence. The second was the language of penal laws on sex work, sex trafficking and gender-based crimes. The third was the policing of the protection of women that are victims of sex trafficking, sexually exploited sex workers and gender based violence. These three sources had a powerful determination on the discourse on sex trafficking, sex work and

gender based violence. They interact continuously depending on the level of power each one holds. However, they are not the essential and only sources of determination. For instance, the Trafficking Protocol had a basic influence on the drafting and passing of the HTL in 2009. But it did not influence an amendment of the language of the JPC. In the following, I discuss the analysis of the three Chapters VI, VII and VIII.

IX ACCESS TO JUSTICE IS SOCIAL JUSTICE: JORDAN'S OBLIGATIONS TO PROTECT WOMEN FROM GENDER-BASED VIOLENCE

Although sex trafficked victims share a unique position with other human trafficked victims, together with sex workers and domestic violence victims, they must be treated similarly to achieve social justice. Being treated similarly requires consideration of the intersectional sources of discrimination. I argue for the need to consider intersections of gender-based violence not criminal violence against women in cases of sex trafficked females and sex workers in Jordan.

Chapters V, VI and VII explored the triangular sources of influences to sex trafficked females and exploited sex workers. The first source of interactions is from legal texts. The second source is from Jordanian attitudes towards sex trafficked females, sex workers and gendered violence survivors. The third source of interactions that influence sex trafficked females and sex workers is the policing of protection and service provision for sexually exploited-females, both sex trafficked females and sex workers.

In the following, I discuss findings, which describe 'social interactions', 'social formations' and 'social practices', as explained via some of the tools of CDA and Smart's sexed body approach.⁸⁵¹ The already formed social practices resulted in the present treatment of sex workers as deviant, and sex trafficked females as victims of crimes, in isolation from gender-based violence. This section discusses Jordan's obligations under the international women's rights framework and considers amendments to the JPC and HTL. In this human rights framework,

⁸⁵¹ See Smart, above n 342, 70; Smart, above n 175; see also Fairclough, above n 842, 162; and Fairclough, above n 172.

exploring the contextual circumstances of gender discrimination allows for the development of suitable policies.⁸⁵² In the following, I also explain why I argue for the social justice approach.

In light of the data presented in the three analysis chapters, I argue that, given the service providers' perceptions and the JPC's position on gendered roles, women and girls, honour, sex, domestic violence and sex work in Jordan have been historically constituted in sources of language, legal texts and the spoken word that materialise in social practices. Not all sources of texts, language and practices in the cultural context in Jordan have even (equal) powers.

Therefore, the most powerful are those able to influence social interactions, social practices or social formations.⁸⁵³ However, it was not my intention to examine why this is so, but to explore how social practices affect sex trafficking and sex workers. One of the main sources, which is powerful in determining the ideology and constructing the discourse on sex work and sex trafficking, is the law.⁸⁵⁴

For instance, regarding the legal texts in Jordan, Smart noted that the power of the law can lead to the law's claim to be the truth.⁸⁵⁵ In light of Smart's approach, I argue that the language in the JPC has contributed to constructing a certain understanding of women, particularly sex workers. This perception affects people living in Jordan, criminal justice administrators and service providers, as well as influencing the enactment of Jordan's international human right obligations under the ratified *Trafficking Protocol* (2000). However, I cannot generalise to all affected, given my limited access to service providers in Jordan.⁸⁵⁶ I, therefore, analyse the JPC and link the

⁸⁵² See United Nations, 'Women's Rights Are Human Rights' (Paper presented at New York; Geneva, <<http://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>>).

⁸⁵³ See Fairclough, above n 754.

⁸⁵⁴ See research design chapter on the power of the law; see also Smart, above n 342, 70.

⁸⁵⁵ Ibid.

⁸⁵⁶ See Byrne, above n 72, 187; Gobo, above n 94.

behaviour, language and opinion of service providers to the law to contextualise the service provider participants' conversations.

Figure 8–1 demonstrates the different sources that influenced the social practices on the treatment of sex workers and sex trafficked females. Therefore, I argue for the importance of understanding the powers of culture and law in framing the discourse on sex trafficked victims and sex workers.

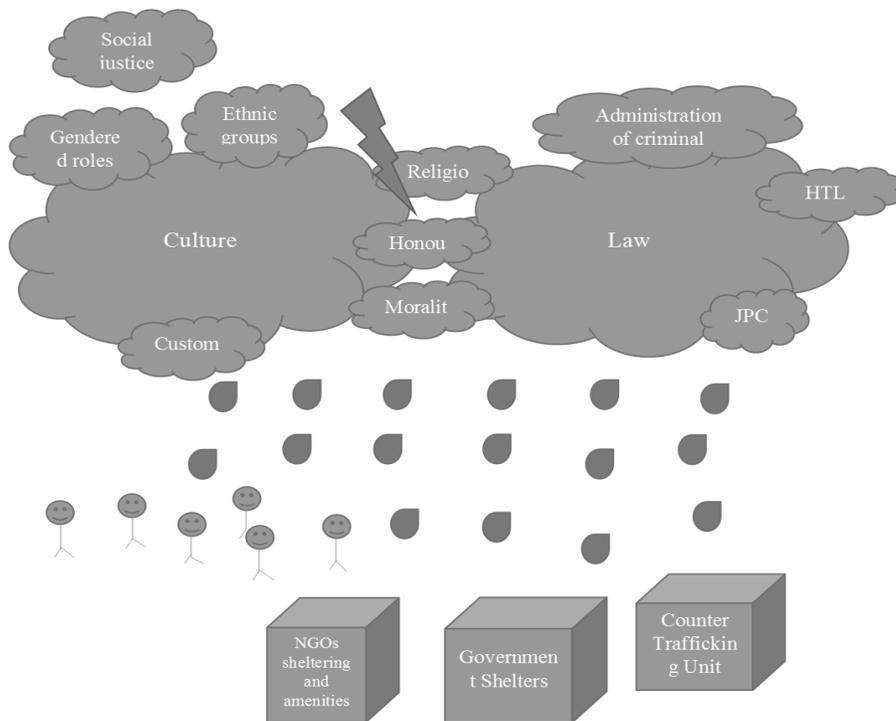


Figure 8-1 the discourse on sex trafficking and sex work from the three analysis chapters

The big clouds, culture and law, had a major [powerful] influence on the discourse of sex trafficking and sex workers in the studied context. Nonetheless, law and culture determine smaller clouds, the sub-clouds in the figure. In some instances, the sub-clouds have been formed from both culture and law together. Complex language, speech and social practices percolate to the people in Jordan, service providers, criminal justice and social justice, individuals, women (including sex trafficked victims and sex workers) and sheltering and amenities. However, it must be noted that the relationship is dialectical, in accordance with the CDA.⁸⁵⁷ The figure does not imply that the influence is one-sided (from the top going down); the people in Jordan may also influence the formation of new practices. In addition, Figure 8-1 does not imply that law and culture are the only sources influencing policing. International policies and international and regional organisations could influence Jordan's position on sex workers and sex trafficked victims.⁸⁵⁸

As social practices affecting sex trafficked females and sex workers are dynamic, different arguments will be alluded to. The first main argument and sub-arguments relate to Jordan's compliance with its human rights obligations toward sex trafficked victims and sex workers, regarding interactional categories of discrimination and constructed sources of oppression. The second argument and sub-arguments focus on the influence of the JPC and the HTL and their level of effectiveness to protect the rights of sex trafficked victims and sex workers. The third argument and sub-arguments relate to misconceptions about the HTL and the governance of criminal justice and social justice practices. These three main arguments with their sub-arguments will be presented in the following discussion of the findings.

⁸⁵⁷ Fairclough, above n 172, 37–38.

⁸⁵⁸ See Halley et al, above n 380.

A Sex Trafficking and Sex Work in the Context of Jordanian Law

In this section, I present my arguments and critique of the JPC and the HTL as laws requiring amendment. I also represent my discussion of the policing of sex trafficking in light of the sheltering options, services and amenities offered within the government shelters and NGOs.

Reform of legal language

I argue that the JPC has constituted the discourse on women and re-enforced gendered roles in the Jordanian society. The law has contributed to reinforcing established binary oppositions of what a woman should be, for example, whores/Madonnas, moral/immoral, decent/indecent, good/bad or honourable/dis-honourable.⁸⁵⁹ For example, in article 310(1) of the JPC, the criminalisation of procurement is imposed unless the procured female is known for her immoral acts.⁸⁶⁰ The fact that the requirement for exemption of the procurer (pimp) is relying on the general knowledge of the society or anyone else also strengthens the stigma imposed on women. From a human rights perspective, it fails to protect women, as it is neither taking the context of Jordan into account nor the intersecting sources of oppression and discrimination. Not taking the intersections of discrimination into consideration would result in reinforcing the gendered stereotype of these women who are the last beneficiaries of the sex industry.

In light of the analysis of some of the JPC articles, I argue for amending and repealing the articles in the JPC that are related to criminalisation of sexual conduct. Careful consideration should be given to amending criminal legislation involving crimes against honour, starting with less concern to protect family rights to honour or see violations of honour as violations of family

⁸⁵⁹ See on the division of women into whores and madonnas in Smart, above n 342, 53.

⁸⁶⁰ See chapter VI analysis of Art. 310(1).

norms. The language that criminalises conduct against women's sexual freedom should be replaced with less androcentric legislation.

I argue that Article 296 of the JPC, which criminalises the breach of honour of another person, with the act of violence or intimidation, should be amended. Legal provisions should avoid using words that could inhibit the underage victim from identifying herself as a victim of a 'breach of honour'. A law is required that criminalises abusive sexual conduct towards women without their consent, but the language should be impartial. It is crucial to understand the mentality of Middle Eastern Arab women in particular and how the code of honour affects them. If honour is the reason why women remain silent, then women should be protected. Silence does not mean a woman explicitly or implicitly gives her consent.

Article 298(1) on the crime of breach of honour leads me to conclude that the Article should be amended using neutral language,⁸⁶¹ for example, compelling the victim to perform sexual acts, instead of compelling the victim to commit a breach of honour. One may ask, how is sexual conduct and its criminality related to sex trafficking and sex work? My answer is that forms of sexual conduct, for example, crimes against the honour, reinforce gendered divisions, social attitudes, social policing, and the stigma upon women who may become more vulnerable to sex trafficking and the exploitation of sex work. The other recommendation would require separating the first and the second part of Article 298(1) as each refers to different crimes with different names. A victim voluntarily committing a breach of honour (sexual acts) is different from compelling the victim to commit a breach of honour as force is involved.

⁸⁶¹ See chapter VI analysis of [Art. 298\(1\)](#).

Article 293 exempts a husband from punishment if he raped his wife. The law mimics culturally constructed conceptions of women and how they should act instead of tackling the constructed gendered roles for the wife and husband. In other words, the law should oppose violence against women to aid the individuals whose lives are affected by these cultural norms and traditions, rather than ‘copying and pasting’ cultural practices that strengthen social stigma against women. Laws relieving males of criminal liability in cases of marital rape should be removed from the JPC.

Article 304(1) incriminates any man who seduces a woman to have sexual intercourse outside marriage with him, having deceived her with the promise of marriage. However, Article 304(2) requires the deceived woman to provide a court with written evidence or a confession of the accused man who made the ‘promise to marry’. These requirements pose obstacles for women, including those who are vulnerable to sex trafficking from seeking justice, if they have been deceived with the ‘good intention to marry’.

The articles of the JPC, which were analysed in Chapter V, are part of the root causes of discrimination including sex trafficking of victims and the sex work exploitation environment. The administration of criminal and social justice in Jordan are obliged to tackle those causes of discrimination.

The fact that Syrian refugees arrive in Jordan at an alarming rate should be reflected and considered in Jordanian legal reforms. For example, if a sex crime including sex trafficking, rape, sexual harassment and so on, or human trafficking crimes were committed against a refugee woman or a refugee girl-child, given their added vulnerability, the penalty should be harsher than for similar offences against non-refugee women on the offender.

I argue that the intersections cannot be categorised within a grounded category, due to the changing and dynamic situation in Jordan. Therefore, intersectional sources of oppression and intersectional discrimination should be adopted in the Jordanian laws, policy and practice regarding sex work and sex trafficking criminal and social justice. I recommend a definition of discrimination and gender discrimination, which takes intersectionality into consideration to have a context-dependent definition and a dynamic one at the same time. The constructed sources of oppression show intersecting circumstances in which some women might not be able to access criminal or social justice.

Making a victim's vulnerable status a reason for harsher penalties on perpetrators, in the Jordanian context, is crucial for deterrence. Given the intersecting circumstances of vulnerability that result in discrimination, the JPC should include a definition of vulnerability. I consolidate Mattar's position and the UNODC's definition of vulnerability and vulnerable persons and edit it according to my understanding of intersectionality.⁸⁶² The definition of intersectional vulnerability is the status that makes a person susceptible to criminal conduct due to age, physical or mental condition, or who is otherwise facing intersecting influences, making a person incapable of accessing justice as others may do.

The penalty should be harsher if the offender is using the loss of honour to threaten the victims. Moreover, the 'good intention to marry' is also a reason to make the penalty harsher for a person committing gender-based crimes, including sexual exploitation.

⁸⁶² Mattar, above n 492, 385; United Nations Office on Drugs and Crime, *The Concept of 'Exploitation' in the Trafficking in Persons Protocol* (UNODC, Vienna, 2015) 13.

I argue for the need to amend the whole sexual crimes section in the JPC, due to its conflict with the obligations under the CEDAW and the *Trafficking Protocol* (2000). Given my argument for treating women as gender-based violence victims, it is crucial to differentiate the crimes from a crime against honour to gender-based crimes. In general, the JPC or any other penal law in Jordan should not contribute to discrimination against women who are vulnerable to intersecting sources of oppression.

The HTL, I argue for the importance of differentiating between sex trafficking and other forms of human trafficking as this would help different sections of the criminal justice system not to ignore the elephant in the room, that is, sex trafficking and the abusive sex trade environment. Sex trafficking should be confined to the criminal law, including the Jordanian HTL, which is separate from other human trafficking laws. I have reviewed the service provider participants' positions and observed the criminal justice approach in Jordan. Therefore, the conversations with the participants reflected their assumption of sex trafficking as a human trafficking crime, forgetting that it is gender-based violence. Less attention, in general, has been given to sex trafficking though it is a multi-million dollar industry in the Middle East that profits from vulnerable people.⁸⁶³

A consequence of having one definition of human trafficking crimes that includes sexual exploitation and exploitation of prostitution in the Jordanian HTL is that the CTU was established with the support of the Jordanian Ministry of Labour. This labour perspective gave less attention to sex trafficking and attended more to forms of human trafficking including forced labour, labour servitude and child labour. This situation resulted from the NGOs and the civil

⁸⁶³ See chapter VII on the case of the victim [Zahra](#).

society institute's focus on reporting human trafficking crimes rather than sex trafficking. I contend that this is a result of sheltering the sex trafficked victims separately from gender-based violence victims and locating them with other human trafficking victims at the human trafficking shelter established in 2015. Consequently, a lesser number of sex trafficking victims were identified.

Although other forms of human trafficking are as abominable as sex trafficking, the identification, protection and repatriation of sex trafficked victims require different procedures, given the vulnerability of the victims. For example, the consent of the sex worker to practise sex work in an abusive and exploitative environment would add to the difference of sex trafficking from the other forms of trafficking. Another example relates to honour killing; the matter of honour and the patriarchal family of the victim require certain protections given the risk dynamics that differ from those involved in an exploited domestic labour or forced labour.

As explained in Chapter VI, victims' circumstances, vulnerability and intersections of discrimination play a part in making their situation different from other forms of trafficking. According to the studies presented in chapter III, sex trafficking has been studied in light of domestic violence. I refer to one of the studies that showed the similarity between domestic violence and sex trafficking, especially as the trafficker may have an intimate relationship, and may exercise control, coercion and intimidation over sex trafficked victims in ways similar to those of domestic violence offenders (partners).⁸⁶⁴

Governing Sex Trafficked Victims Provision of Services and Amenities

⁸⁶⁴ See Verhoeven et al, above n 728, 49.

I argue that the governance of sex trafficking victims by service providers has shortcomings related to the uneven distribution of powers between the government and NGOs. As Karlsson explained, the formation of anti-sex trafficking agencies and NGOs is influenced by prejudices that structure the context and actors.⁸⁶⁵ The memorandum of understanding resulted in distorting the differences between the role of NGOs and government services for sex trafficked females and gender-based violence survivors. Phoenix's reviewed paper addressed the argument about how the collaboration between government agencies and outreach projects in the governance of sex work in the UK have resulted in blurring the differences between both parties, in addition to limiting the effectiveness of the outreach projects.⁸⁶⁶

The 'intertextuality' incorporated with the 'social formation' and 'social practices', between 2009 and 2015, included the ratification of the *Trafficking Protocol* (2000), legislating the HTL, establishing the CTU, signing the memorandum of understanding between government parties and NGOs and establishing a government shelter specifically for human trafficking victims.⁸⁶⁷

This intertextuality process, together with the legal discourse of the JPC, resulted in revisiting the roles of the government and the NGOs. When I was in Jordan, I found the system of collaboration resulted in changing and disempowering the role of NGOs. NGOs cannot rescue victims unless the victim expressed her interest in complaining to the prosecutor/police. Also, NGOs have a role in informing the administration of criminal justice about the cases that they cannot provide services for.

⁸⁶⁵ Karlsson, above n 801, 79-80.

⁸⁶⁶ Phoenix, above n 708, 73.

⁸⁶⁷ See Reisiql and Wodak, above n 184, 90; and Fairclough, above n 172.

The government does not inform the interested parties, including judges, prosecutors or the police, on how to treat women who are sex workers. Both the government and NGOs fail to inform the policy makers of the situation of women who do not consider exiting sex work. A report should frequently be presented about the situation of women who are too intimidated to contact the government. Justifying not providing services to the trafficked victims by saying that they have a bad impression about the police in their home country and are therefore too frightened to contact the administration of criminal justice in Jordan is not an appropriate response.

Rawan could not help an exploited sex worker to exit sex work or rescue her. She explained that it was hard for her to identify exploiters. The only thing that she was able to do was inform the administration of criminal justice about the case. In this example, the collaboration was a sort of surveillance that hinders the victims from confiding to NGOs.⁸⁶⁸ As long as the victim prefers not to contact the police, the NGOs cannot help the victim in providing options of protection, for exiting sex work or for accessing other services that may empower the victim. Even providing health services remains an obstacle, as she could not admit the victim to the hospital.

Before the establishment of the government human trafficking shelter, the Women's Association did provide sheltering services for the sex trafficked victims after making sure that the victim consents to complaining to the police. The Women's Association provided services for the victims of sex trafficking as a form of gender-based violence. Its services allow a sex trafficked victim to exit sex work with the knowledge that she will be treated as a victim of gendered violence.

⁸⁶⁸ Segrave et al above n 722, 78; and Crast, above n 725.

The Women's Association is a powerful one in Jordan that was formed more than two decades ago. I cannot reveal the date it was established, or its powers, or any other classifying information about the Women's Association, given confidentiality issues and secrecy surrounding the participants. Although the service providers in the Women's Association were close to the government, they had the power to criticise the government. Therefore, I argue for the importance of letting the Women's Association provide services for the sex trafficked victims and exploited sex workers who experience gender-based violence to help them exit sex work, without interference from the criminal justice system and have to complain to the prosecutor. As this civil society institution is old, it has the strength of influencing (determining) the 'speech community' and the social interactions and social practices in Jordan.⁸⁶⁹ Though the Women's Association's service providers and staff are women, they have been in the field long enough to influence the policy decision-making.

B A Women's Rights Approach to Sex Trafficking and Sex Work

Jordan has an obligation to protect the rights of women who belong to marginalised groups, including sex workers, sex trafficked victims, refugees, immigrant women, economically challenged women and other groups. The protection of the rights of these women should be informed by 'corrective' and 'non-discriminatory' approaches.⁸⁷⁰ Therefore, they should be provided with social services in isolation from the criminal justice system. In other words, protective approaches that consider women as incapable of engaging in specific activities treat them as a group with special needs. This unfavourable perspective reinforces the ideological

⁸⁶⁹ Fairclough, above n 172, 38.

⁸⁷⁰ See on corrective, protective and non-discriminatory approaches to women's rights McBeth et al, above n 391; see also Hevener, above n 436, 70.

understanding of women as weak; the result produces a false understanding that restricting their actions to protect them is needed.

A corrective approach would further isolate women who are in intersecting and complex situations. For instance, criminalising or abolishing sex work, sex purchase or any third party who benefits from the sex work of another person is a 'protective approach'. I understand and agree with the fact that women who practice sex work are in a complicated situation that makes them vulnerable to gender-based violence, exploitation, rape, isolation or economic challenges. However, they are also vulnerable to different treatment in the private sphere. However, this does not mean that sex work should be abolished or that any party should be criminalised. In fact, criminalisation and offering criminal justice remedies would further isolate them and stigmatise them. Therefore, these women need to be offered social justice services to promote their easy access to remedies that would empower them or even help them exit sex work without being forced to identify themselves as victims via complaining to the police. Identifying a sex trafficked victim, an exploited sex worker or any sex worker as a victim will stigmatise them.

Jordan needs a treaty that stipulates the social and criminal justice rights of marginalised groups, including sex workers. Specifically, it needs a women's rights treaty that is both corrective and non-discriminatory for sex workers. However, the treaty approach should allow other groups that do not identify themselves as women to qualify for the protection.

According to the CEDAW Committee's General Recommendation No. 28, gender is defined as:

... socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships

between men and women and in the distribution of powers and rights favouring men and disadvantaging women.⁸⁷¹

In light of what Dalal explained to me, gendered roles in Jordanian culture disempower women.

As pointed out in Chapter VI, Dalal explained how with modern social structures, gendered roles, which were as a result of cultural practices before modernisation, have resulted in reinforcing gender-based discrimination. This means that women do not have anything in this life but their household, husband, children and family to enable them to survive.⁸⁷² It is important to note, that I mainly depended on her opinion in this conclusion due to the fact that she is a native Jordanian Bedouin who lived before modernisation and had an opinion which was formed due to her living experience of before and after modernisation in Jordan. Nawal has also illustrated how modernisation and the economic changes had an influence on women; she saw the impact as more noticeable on women living in the city than women in rural areas in Jordan.

Gendered roles have made women who belong to marginalised groups or women who are in intersecting categories become vulnerable to sex trafficking or to practice sex work. According to the stories of victims, constructed sources of oppression reinforced de facto gender-based discrimination that happened in the private sphere, and included constructed gender roles, social stigma, constituted economic class and loss of source of power position.⁸⁷³

Jordan has failed to meet the requirements of article 2 (c), (f) and (g) of the CEDAW.⁸⁷⁴ Jordan should have adopted an appropriate policy to ‘eliminate discrimination against women’. Jordan

⁸⁷¹ General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the *Convention on the Elimination of All Forms of Discrimination against Women*, (16 December 2010) UN Doc CEDAW/C/GC/28.

⁸⁷² See Chapter VI for the [saying](#) that was mentioned by Dalal.

⁸⁷³ See Chapter VI.

⁸⁷⁴ *United Nations Convention on the Elimination of all Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

did not provide ‘effective protection of women against any act of discrimination’⁸⁷⁵ or take ‘appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women’.⁸⁷⁶ It did not repeal penal provisions that constitute discrimination against women. The repealing and/or amending the JPC section on crimes against the family and the honour is crucial for the compliance with article 2. However, the language of the law in Article 310(1) of the JPC, which reinforces the cultural meaning of honour, the ‘breach of honour’ and the division of women into moral and immoral, is hindering the elimination of discrimination against the women who are living in dire circumstances.

Jordan has failed to consider the understanding of intersecting forms of inequality. General Recommendation No. 28 explained that intersectionality is basic ‘for understanding the scope of the general obligations’ in article 2 of the CEDAW.⁸⁷⁷ For instance, they did not consider how gendered discrimination may affect women belonging to a certain group, such as refugees, immigrants or other categories. When speaking of early marriages or temporary marriages, the participants explained and justified those customs that accompany immigrants and refugees to Jordan. General Recommendation No. 28 states that the States Parties need to adopt a policy to ‘eliminate such occurrences [intersectional categories]’ including, where appropriate, ‘temporary special measures’ due to arising intersectional circumstances.⁸⁷⁸

⁸⁷⁵ Ibid art 2(c).

⁸⁷⁶ Ibid art 2(f); see Hevener, above n 436, 79.

⁸⁷⁷ General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the *Convention on the Elimination of All Forms of Discrimination against Women*, (16 December 2010) UN Doc CEDAW/C/GC/28 para 18; see McBeth et al, above n 391.

⁸⁷⁸ Ibid.

The Jordanian policy, in servicing the victims of sex trafficking in human trafficking shelters, would fail to identify the intersections of human trafficking victimisation with gender-based violence. I argue for the need to consider Walsh's position on the appropriation of sex trafficking as a form of gender-based violence.⁸⁷⁹ Victims of trafficking ought to be sheltered in the gender-based violence shelter instead of being sheltered in the human trafficking shelter.

Jordan did not consider that in having a government shelter, which serves human trafficked victims including men, women and children, they indirectly discriminate against women. The CEDAW Committee's General Recommendation No. 28 stipulates how indirect discrimination occurs when 'a law, policy programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women'.⁸⁸⁰ Indirect discrimination as explained in the recommendation can 'exacerbate existing inequalities' as it overlooks historically structured gender roles.⁸⁸¹

Sex trafficked victims have unique sheltering needs that differ from that of other forms of human trafficking.⁸⁸² The sheltered women should have a separate shelter or the sex trafficked victims should be accommodated in the gender-based violence shelter. Women who have been trafficked or exploited while practising sex work might prefer not to be rescued or be classified as a victim of human trafficking or sex trafficking.⁸⁸³ If she were seen as a victim of gender-based violence, it would be less stigmatising. She would avoid stigma or any stereotyping associated with having practised sex work, even if she was forced or had lost honour. Given that these women may want

⁸⁷⁹ Walsh, above n 496, 221–45.

⁸⁸⁰ General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the *Convention on the Elimination of All Forms of Discrimination against Women*, (16 December 2010) UN Doc CEDAW/C/GC/28.

⁸⁸¹ Ibid.

⁸⁸² Ibid.

⁸⁸³ See Johnson, above n 564, 370.

to exit the shelter, they might be in danger of being re-trafficked or face social stigma, vulnerability or marginalisation.

If this kind of gender-based violence were not classified as violence related to sexual intercourse, such as exploitation of sex work, sex trafficking, rape or sexual harassment, the female victim would re-enter the society with her privacy respected.

According to General Recommendation No. 19 of CEDAW, human trafficking is gendered violence. As explained above, the domestic shelter in Jordan stopped receiving cases of sex trafficking. The service provider, who participated in this research, from the domestic violence shelter explained to me how they have a separate human trafficking shelter, specifically for trafficked victims, including men, women and children. For better care and support for the victims of sex trafficking, since they face gender-based violence, domestic violence or are intimidated by the threat of honour killing or abandonment from the family, sex trafficked females must be housed in a shelter that is specialised to receive gender-based violence victims, including sex trafficking victims.

In addition to the Human Rights Law, I refer to Jordan's obligations under the *Trafficking Protocol* (2000). The first obligation under the *Trafficking Protocol* (2000) would be to investigate, prosecute and punish. According to the findings, Jordan ratified the protocol, passed the HTL and established government sheltering services and the CTU. Jordan also reformed a policy and established collaboration among NGO and government members for the policing of trafficking. However, this is not all that needs to be done in protecting sex trafficked victims, knowing that the protocol is especially for women and children. There was an impression from some of the service providers that the government did what they are obliged to do. When I asked

Mohammad about the appropriate policy in Jordan regulation or abolition, he told me that the government is complying with the *Trafficking Protocol (2000)*; he also explained how this matter is relevant to each jurisdiction in how to go about sex work. He pointed to other jurisdictions in the MENA region that criminalise sex work in comparison to Jordan, where sex workers are not criminalised. I refer to Smith's point that 'states that jealously guard their sovereignty' would argue that they have ratified the protocol and legislated relevant laws.⁸⁸⁴ Like other States, Jordan has focused on its obligation to prevent, prosecute and punish, under the *Trafficking Protocol (2000)*, rather than on the rights of women under the CEDAW in relation to sex trafficking of females.⁸⁸⁵

Article 9 (4) of the *Trafficking Protocol (2000)* stipulates that States Parties should 'strengthen measures ... to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal protection.'⁸⁸⁶ Women who face intersecting sources of discrimination are left vulnerable to trafficking by organised trafficking-groups. The Jordanian government should adopt measures that tackle the causes of sexual exploitation.⁸⁸⁷

According to Article 9(4) of the *Trafficking Protocol (2000)*, states are obliged to provide a comprehensive criminal justice response to 'alleviate the factors that make persons, especially

⁸⁸⁴ Heather Smith, above n 571, 271.

⁸⁸⁵ See Seaman, above n 474.; Shoaps, above n 477, 933.

⁸⁸⁶ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003) art 9(4).

⁸⁸⁷ See Obokata, above n 432; Gallagher, above n 177; Mattar, above n 492, 385; International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 2(2); see Committee on Economic Social and Cultural Rights General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12), UN Doc E/C.12/2000/4 (11 August 2000).

women and children, vulnerable to trafficking'.⁸⁸⁸ The constructed sources of oppression, mentioned in the findings in chapter VI, should be alleviated as they reinforce vulnerability, especially at the intersection of other sources of oppression involving, for example, refugees, marginalised women who have lost their honour and immigrant women. Moreover, Article 9(5) obliges States to 'discourage the demand' that fosters forms of exploitation that 'lead to trafficking'.⁸⁸⁹ Jordan did not tackle the demand for sexual services, especially sex tourism, as the demand involves Arab men who travel to Jordan specifically for such services; this was explained in Chapter VI.

Access to justice and services in Jordan is obstructed in cases of vulnerability given the intersecting and consolidating sources of discrimination. According to article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Jordan is obligated to take non-discriminatory measures for vulnerable populations to access services and justice.⁸⁹⁰ For example, a Gypsy girl-child should have easy access to justice and protection in cases of sexual exploitation in domestic violence spheres. Justifying the existence of cases of girl-children sexually exploited in Gypsy communities is a common practice. If girl-children in vulnerable communities are susceptible to domestic-sexual exploitation, tackling the causes of vulnerability to trafficking will enable them to access to justice.

⁸⁸⁸ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003).

⁸⁸⁹ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crimes*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003), art 9(5).

⁸⁹⁰ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 2(2).

One of the intersecting sources of discrimination is loss of honour that is stigmatised. In many stories presented in chapter VIII, the victims were vulnerable and without access to justice, due to their loss of honour and/or fear of honour killing or were abandoned by their families. The Jordanian criminal justice administration has failed in addressing honour killings as one of the root causes of gender discrimination against some of the sex trafficked victims and the exploited sex workers. The JPC reinforces the root cause of vulnerability, due to loss of honour, by strengthening the code of honour as a value that needs legal protection and a penalty for those who breach the code of honour. In addition, the service providers return the victim to her family following reconciliation, instead of arranging witness protection programmes that locate surviving victims in housing programmes.

The *Trafficking Protocol* (2000) remained silent on the need to access remedies before being identified as victims; however, there is the need to adopt the European Trafficking Convention policy in Jordan in providing women with services without identifying the women as victims. In other words, women must be provided services without having to raise a formal complaint to the police to get the chance to exit sex work if the female wants to. This approach would support Jordan's compliance with Article 9(5) of the protocol.

The HTL is not explicit in allowing for the principle of non-criminalisation of the victims of trafficking to be applied in Jordan. Gallagher considered the non-application of this standard as the antitheses of the victim-centred approach.⁸⁹¹ I argue for the need to amend article 12(a) of the HTL to have direct language obliging the administration of criminal justice to exempt the victim from punishment. Rawan told me a case of a woman who did not get the right of exemption from

⁸⁹¹ Gallagher, above n 177.

punishment.⁸⁹² As explained in Chapter VII, this is a misconception between the participants about Article 12(a), thinking that it obliges the prosecutor to exempt the victims from punishment;⁸⁹³ it gives the prosecutor the ‘right to order’.⁸⁹⁴ Mohammad explained that he believed that sex trafficked victims could benefit from this article.⁸⁹⁵ Nonetheless, Rawan was optimistic about the law and saw the need to apply it. She considered the prosecutor to be obliged to form a committee for exempting the victim from punishment.

Given the silence of the *Trafficking Protocol* (2000) and other treaties about detaining the victim of trafficking, the Trafficking Principles and Guidelines stipulate that victim detention is an inappropriate response or treatment.⁸⁹⁶ As mentioned in Chapter VII, Nawal explained how it is not a solution to keep the victim detained for the rest of her life. She also recommended the use of witness protection programs to reintegrate the victim into society.⁸⁹⁷

The *Trafficking Protocol* (2000) is passive in protecting victims who do not cooperate with the criminal justice system. For the woman to be protected, the NGOs and service providers of the government encourage the women to complain to the prosecutor to provide her with services. The service providers did not say that the administration of criminal justice in Jordan considered that female victims cooperate with the government to receive care and support. However, requiring a woman to complain to the prosecutor or the police as a condition of rescuing her and providing her with care and support would aid the administration of criminal justice. She would then be listed as a witness to the crime of trafficking. There is the need to adopt the European

⁸⁹² See Rawan’s story chapter VIII.

⁸⁹³ See the analysis of the misconception about the HTL in chapter VIII.

⁸⁹⁴ Jordanian Human Trafficking Legislation (No. 9) (2009), art 12(a).

⁸⁹⁵ See Rawan’s position in chapter VIII.

⁸⁹⁶ Guideline 2 chapter VI.

⁸⁹⁷ See Nawal’s opinion chapter.

Human Trafficking's policy in obliging the administration of criminal justice to provide protection and support of women regardless of whether the victim cooperates with the criminal justice system.

Since sex workers are too intimidated to report exploitation, gender-based violence, coercion or rape, their rights to access to justice must be addressed. As explained by Majida, out of 65 women who were locked up in hotel rooms, only seven agreed to submit a complaint to the prosecutor after being discovered by the administrators of justice. Only seven out of 65 were identified as victims of sex trafficking, and had the chance of being rescued and receiving care and support. Conditioning sexually-exploited women to be identified as victims, by complaining to the prosecution, violates their right to have equal rights with men to 'effective protection of women against any act of discrimination', according to article 2(c) of the CEDAW.⁸⁹⁸ In other words, intersecting circumstances impeding women from accessing justice are not addressed.

One of the cases mentioned by Rawan involved a female sex worker who was exploited. She refused to complain to the police. This female was in need of services, amenities and even protection, but it was hard for Rawan to assist her. The exploited sex worker also needed access to health care; she was even denied admittance as a patient by a local hospital. If the hospital was in a private sector, the female sex worker would have been denied access to health care. This position reflected general social attitudes towards sex workers. Access to justice is implicitly impeded because policies and measures enabling vulnerable groups, like Rawan's client, to access remedies were not available. The policy was not adopted allowing women access to justice, as they are stereotyped as persons who had committed an immoral act. Rawan's client

⁸⁹⁸ *United Nations Convention on the Elimination of all Forms of Discrimination against Women*, Date Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 2(c).

should have had the right to access the hospital without discrimination. She was experiencing intersecting sources of oppression. According to the rule of due diligence, the government is obligated to intervene in this case and oblige the private actor (the hospital) to provide health care for this woman, without discrimination.

Access to services and amenities and other privileges as a human being should be provided for sex workers. Consideration must be given to sex workers who face intersectional gender-based discrimination that prevents them from accessing justice. Sex workers are a category of people who face discrimination, given their occupation. Jordan does not comply with the General Recommendation No. 19 on due diligence. Jordan, a State party to CEDAW, ‘may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence’.⁸⁹⁹ Criminal and social justice approaches should be responsible for letting marginalised sex workers receive services and preventing private actors’ violation of women’s human rights.

According to the *International Covenant on Civil and Political Rights* (ICCPR),⁹⁰⁰ in article 2(3), Jordan is obliged to protect the rights of any person via effective remedies, if their rights and freedoms have been violated by a state actor. Nonetheless, they are obliged under the same article (article 2(3) of the ICCPR) to provide an ‘effective remedy’ within a ‘competent judicial, administrative or legislative authorities’.⁹⁰¹ Article 12(a) of the HTL is not considered to be an

⁸⁹⁹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19 on Gender Based Violence against Women* (1992) CEDAW/C/1992/11/GC para 15.

⁹⁰⁰ ICCPR was ratified by Jordan on 28 May 1975.

⁹⁰¹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 2(3).

effective remedy to access justice for a victim detained as an offender even if she is identified as a human trafficking victim.⁹⁰²

According to the service providers I interviewed, there is a misconception within the understanding of the HTL. Powerful parties may affect persons providing services to women. I argue for the need to amend this paragraph and make it an obligatory rule to exempt the victims of sex trafficking regardless of their involvement in committing any crime under the JPC and the HTL.

Effective access to justice for all categories regardless of whether the victim is sex trafficked or a sex worker should be considered. Contextual and ideological dynamics locate particular female groups in powerless and vulnerable circumstances that impede them from accessing justice.⁹⁰³

This fact should be considered in adopting policies and legal reforms, and providing effective remedies and measures for them to access social and criminal justice, separately. Jordan should consider adopting a policy that would enable marginalised groups to access social justice separately from the administration of criminal justice. As in one of the cases mentioned by Rawan, a sex trafficked victim was too intimidated to report the crime against her to the police because she was scared her perpetrators could influence the government. This is not to say that sex traffickers had strong connections with the government, but that women who are sex trafficked can be prevented from dealing with the criminal justice system. Therefore, they should

⁹⁰² See chapter VII on discussion of the HTL. See *Jordanian Human Trafficking Legislation* (No. 9) (2009), art 12(a).

⁹⁰³ See chapter V on Fairclough's analysis approach to uneven distribution of powers and its influence in determining the social practices; see Fairclough, above n 172.

be granted social justice in isolation from criminal justice options to enable them to exit the exploitative sex work environment.

Feminist Critique of the legal reform in Jordan

A semi-prohibitionist approach informs Jordan's recent legal reforms. Jordan does not criminalise sex work, but it is indirectly criminalised in the case where a sex worker is found to be practising sex outside marriage, called *talabus bel zenna* (caught in the act of fornication). Decriminalising sexual intercourse and incorporating a non-prohibitionist approach are required.

In light of the comments made by the service providers, I find it hard to use their opinions on the sex work debate to guide reform of policies. They have limited access to the sex work debate and an inability to differentiate between decriminalisation and legalisation. Also, not all of the participants gave a direct answer. For instance, Rawan believed in temporary legalisation, whereas Dalal implicitly answered with her belief that when a woman poses naked in an advertisement or for a magazine, she would violate the right of other women who do not want the image of their bodies, as women, to become a commodity.⁹⁰⁴

Mohammad did not find the sex work debate as having relevance for sex trafficking crimes. He pointed to Jordan's compliance with their obligations by ratifying the *Trafficking Protocol* (2000) and the passing of the HTL, which includes an article that he thought exempted victims of trafficking from prosecution.

I agree with the culpability of the male consumers or 'Johns' in causing the crime, given their demand for sex work. However, criminalising these Johns will further complicate the issue as

⁹⁰⁴ See Dalal's position in chapter VII.

sex trafficked victims and exploited sex workers would be further marginalised to protect the safety of the Johns. When these women become more marginalised, they become vulnerable to sex trafficking and gender-based violence, and other inhumane treatment from Johns or abusive pimps. There is a demand for sex commodities in Jordan, especially from Arab men from other countries including the Gulf. I disagree with criminalising sex consumers (Johns). The fact that it is an androcentric culture will further isolate sex workers. Instead, the language of the JPC should be changed to reduce the powers of male pimps and Johns. Nonetheless, even if sex purchase is criminalised, females who belong to categories of vulnerability will find themselves in intersectional circumstances that would lead them to get trapped in a form of sex trafficking or exploitative sex work.

An exploitative and abusive John should be criminalised under the reform of Jordanian laws if the sex worker or the victim of sex trafficking complains to the prosecutor about abuse, exploitation, deception or use of force. The criminalisation of both Johns and pimps would rely on an official complaint from the harmed person who is facing intersectional sources of oppression.

According to material presented in Chapter VI, the perpetrators of trafficking are usually lovers, husbands, family members or boyfriends who come with the ‘good intention to marry’. These cases share similar perpetrators with domestic violence female victims; comparable to Varhoeven et al’s findings.⁹⁰⁵ The similarities between sex trafficking and gender-based crimes need to be taken into consideration for policy reform that treats gender-based violence victims

⁹⁰⁵ Verhoeven et al, above n 728, 49.

and sex trafficked females equally regarding providing both of them with similar service amenities.

In light of this, I argue for applying Duluth's victim-centred approach in Jordan.⁹⁰⁶ Positioning the police, prosecutors and judges of sex workers as sources of morality should be tackled by changing the discourse. This is necessary to make changes for empowering women who do not have an equal footing with men and for the government in determining social formation and practices. Training government staff about the administration of criminal justice, post-traumatic stress disorders, stigma, loss of honour and other mentally challenging problems sex workers in Jordan, regardless of their consent, suffer from is sufficient in breaking the view of sex workers as a source of deviance and immorality.

I argue for decriminalising sex work and pimping in the Jordanian context. Sex workers are either trapped or sheltered, with or against their will, in hotel rooms, apartments, in areas that are private and close by nightclubs. Sex workers are already performing sex work in a hidden and underground industry. Therefore, criminalising the other parties involved via an abolition model will make it harder for the criminal justice system to identify exploited and abused women. The victims will become even more vulnerable to different inhumane forms of treatment.⁹⁰⁷

The Jordanian context differs from the Swedish context in which buying sex is criminalised, but the selling sex is not. Abolishing sex work would have a different effect on Jordan, knowing that in Jordan sex work is a cultural taboo, immoral conduct. Therefore, it is hidden underground.

⁹⁰⁶ Walsh, above n 496, 221–45.

⁹⁰⁷ See Chapter IV on the sex purchase act paradigm.

Consequently, abolishing sex work will have a doubled effect in Jordan, regarding its shift to the underground.

Street soliciting appears not to be an issue in Jordan. This might be because it is a conservative culture where sex outside marriage is considered an immoral activity. Persons who want to buy sex would go to nightclubs or bars.

Legalising and regulating sex work in Jordan would become stigmatising for the sex worker, as in the Tunisian model. In Tunisia, where honour is relatively similar in understanding to the Jordanian culture, sex workers are limited from exiting their premises. They are treated as a source of contagion and obliged to have regular health checks. Legalisation in Tunisia imposes strict rules on sex workers. As evidence that Tunisia is a conservative culture, the recent ban on sex work in Tunisia was a result of the new government's approach to sex work as a source of immorality and deviance. I assume that if legalisation was applied in Jordan, it would resemble the former Tunisian legalisation: a strict and stigmatising approach to sex workers, who may be sex trafficked or exploited.

The discussion of the effects of sex work on public health would further stigmatise sex workers and result in seeing them as a 'high risk' category.⁹⁰⁸ The hospital's refusal to admit the exploited sex worker who needed health care, as explained by Rawan, is a sign that these women are not only seen as a source of deviance, but a health risk and contagion.⁹⁰⁹

⁹⁰⁸ Scott, above n 675.

⁹⁰⁹ See the Rawan's story in Chapter VII.

I favour Walsh's position on the sex work debate.⁹¹⁰ I argue for the need to consider the rights of sex workers that are obstructed by approaches requiring sex workers and sex trafficked females to complain to the police, acquire a permit, perform health checks or respond to other commands. Sex workers or sex trafficked victims must be rescued, serviced or recognised. To date, sex workers go unrecognised and unseen for policymakers; while also being easily accessible to traffickers and Johns.

A memorandum of understanding imposes guidance for NGOs on service providers that renders sex workers unseen and unrecognised. Even if NGOs consider helping women who are exploited in the sex trade, they do not have the support of the government in empowering them to help those who prefer social justice without criminal justice (those who prefer not to complain to the prosecutor). This situation explains that there is a failure to distinguish between social justice and criminal justice, although the two are interrelated. The difference between social justice and criminal justice is blurred in the Jordanian Government's approach to sex trafficking.

Government shelters need to be under the administration of the Ministry of Social Development, but victims are referred by the criminal justice administration. Therefore, the Ministry of Social Development is empowered only in the administration of the centre and the providers of the services, but not the right to choose who will access the services.

C Summary

The failure in understanding morality may result in adopting false legal reforms. The recent ban on sex work in Tunisia is a living example of the effect of the false conceptualisation of morality.

⁹¹⁰ Walsh, above n 496, 221–45.

First, they regulated sex work by categorising them into a ‘high-risk population’ that cannot exit their dormitory whenever they want to; later, the effect of morality resulted in banning sex work because it brings immorality to Tunisia’s conservative population.⁹¹¹ Perceiving female sex workers as immoral results in seeing their bodies as needing control by methods of regulation, penalty, victimisation or detention for their own good. The effect of the failures in politicising morality would result in one of three approaches: legalisation, prohibition or abolition. These three approaches will stigmatise women or marginalise them as they might not want to be seen either as victims, regulated bodies or criminals. These women should be seen as human beings deserving the protection of their rights via social justice institutions.

⁹¹¹ See *Tunisia: Rapists Given a Way out While Their Victims Are Blamed and Punished* (2015) Amnesty International <<https://www.amnesty.org/en/latest/news/2015/11/tunisia-rapists-given-a-way-out-while-their-victims-are-blamed-and-punished/>>; see also Aljoeidi, above n 442; Olivesi, above n 447; Zizirider, ‘The Prostitutes of Adballah Guech Alley: The “Pride” of Tunis’, *The Observers* (online) <<http://observers.france24.com/en/20101031-prostitutes-adballah-guech-alley-pride-tunis-tunisia>>.

X CONCLUSION

A *Outcome of the research*

As presented in the chapters, starting from Chapter I to Chapter VIII, the significance of sex trafficking criminal activities, and unmanaged and neglected exploitation of sex workers on females who remain vulnerable in these scenarios have not been effectively addressed. The three influences to the discourse on sex trafficking and sex work need tackling by changing the language, texts, practice, values and other ruling circumstances. The social formation should gradually start to reflect equal treatment of all genders and groups; the language should not be biased toward advantaging males. Answering the main thesis question is a start to round up the outcome of the previous chapters.

The answer to the main thesis question, which reads, 'what is the appropriate treatment of sex trafficked victims and sex workers in Jordan?' should be answered at this final stage of the thesis. The appropriate treatment should be by, first, regarding them (sex trafficked female and sex workers) as humans that might endure intersectional discrimination and consolidated sources of oppression, which hinders their access to justice like other groups of women. Second, the appropriate treatment then would be by decriminalising sexual conduct that incriminates those females and repealing laws causing stigma. For instance, the incrimination of sex work management and procurement is based on an historical ideology that is part of an androcentric culture that stigmatises women who are working in the industry or those who are vulnerable and

seen as immoral.⁹¹² The second step would be by amending the HTL to make the provisions of exemption from punishment obligatory for sex trafficked victims if they face legal stigma or incrimination due to becoming sex-trafficking perpetrators. The third step would be by providing easy access to social justice as being separated from the administration of criminal justice. Access to social justice should not be conditional on any criminal justice procedure.

The intersectional feminist approach provides tools to consider the circumstances of sex trafficking and exploitation of vulnerable women and girls in Jordan. Forms of trafficking, though variable, target specific populations and groups depending on their circumstances and vulnerability. Attention must turn to the historical construction of gender roles and women's vulnerable status that inform social policies and criminal justice responses. The three themes of this research, cultural context, feminism and human rights, confirm a deficit in service provision for vulnerable girls and women who become sex trafficked victims and sex workers. This thesis argues for social justice for all involved including those who do not want to exit sex work and do not want to seek criminal justice intervention.

A group, especially women and girls, requiring an understanding of their vulnerable status, are the Syrian Refugees in Jordan that numbered 655,056 persons on 16 November 2017. In January 2014, the UNHCR established an inter-agency initiative, called the Vulnerability Assessment Framework. The initiative played a role in assessing and monitoring Syrian refugees' vulnerability. However, information on what constitutes vulnerability remains vague, especially as the term is confused with poor and poverty. My core argument involves how constructing categories for the word 'vulnerable', or for vulnerable women, obstructs the needs of minority

⁹¹² See Chapter V on [stereotyped morality of female](#).

groups requiring attention. Research categories based only on class, gender, or race limits the possibility of understanding the oppression of women at the grassroots level. Research that considers dynamic power relations within the different groups in Jordan would provide a more practical and comprehensive approach. An anti-categorical approach opens the door for greater understanding.

Focussing on policies in Jordan demonstrates the influence of power relations at both the micro and macro levels. This is why I recommend policy reform that empowers powerless parties like NGOs and legal Clinics.

Two drafts of amendments for the JPC, in 2015 and 2016, did not consider amending or repealing the Articles that construct a moral division among females.⁹¹³ Neither did the bills consider repealing the laws on criminalising the breach of honour and replacing them with laws that explicitly violate women's freedom of bodily experiences. However, the recent repeal of Article 308 is a good step to repealing laws that have created gender and moral divisions.⁹¹⁴

The intersectionality approach led me to gather stories to provide focused research, knowing that sex trafficked victims and sex workers are likely to have tolerated similar intersecting forms of oppression. Also, it is impossible to differentiate between consent and coercion in the underground sex industry in Jordan.

⁹¹³ Follow the link in Arabic from the official website of the Jordanian Ministry of Justice < <http://moj.gov.jo/DetailsPage/MOJ/NewsDetails.aspx?ID=588> >; see also <<https://www.alwakeelnews.com/article/140071>>.

⁹¹⁴ See Ammnesty International on Jordan: < <https://www.amnesty.org/en/countries/middle-east-and-north-africa/jordan/report-jordan/> >.

B *Research limitations*

In the following, I include all of the limitations that I encountered and add a window to the possibility of doing further research.

My research has limitations that were largely beyond my control. For instance, I could not interview a sample of all the groups and individuals involved in sex trafficking and those exploited in the sex industry in Jordan. By necessity, given the dangers and ethical concerns involved, I relied on the views of service provider participants in their work with sex trafficked victims and sex workers.

My research was constrained by the sensitivity of the topic, which resulted in only a limited number of participants able to share their experiences of victims they had met and endeavoured to help. I recommend further interdisciplinary research on the need for specific types of government, private and other services to assist victims in exiting the work safely. Services must also cater for the sources of oppression that develop and change over time, and enmesh new victims.

This research is limited by the small number of participants. Additional interviewees were simply not available during the times that I visited Jordan.

Survey-based research to investigate the role of all parties in the administration of criminal and social justice for the sex trafficked females is crucial. This kind of research would have the potential to provide an understanding of how to connect several criminal justice administration agencies for collaborative purposes. I point to training that was provided to the criminal justice staff of the Jordanian government by the United States' Department of States as a 'post-action report' in 2013. The post-training report explained a split in the decision-making between the

police, prosecution, and the judges. This split between the different parties influenced the determinations of policing the protection of sex trafficked females in Jordan. This is why I would argue for further research on the multi-level analysis of the Jordanian criminal justice administration of human trafficking crimes.

Several cases were found of girl-children who were sex trafficked via several forms of trafficking, including temporary marriages and entertainment industries. In these forms of sex trafficking, the offenders include their families who collaborate with trafficking criminal groups. I recommend the need for amendments, which would protect girl-children. For instance, the custodian laws and rules should be amended. From the stories, girl-children were returned to their families who failed to protect them or who intend to re-traffic them. The memorandum of understanding needs to be revisited as it obstructs the provision of services.

Returning girls safely to their families is crucial. Doing so is complicated because of the complexity of custodianship in the family law, which derives from Islamic jurisprudence, traditions and customs of the Middle East ethnical groups. For example, in most Middle Eastern Arab societies, it is preferable for underage girls to be raised under the custody of male kin, in particular, the father, the brother, the uncle or the grandparent. However, according to Islamic jurisprudence, underage girls stay under the guardianship of the mother. This matter is too complicated for me to argue for a particular approach. I recommend further research to understand the complexity of custodianship in Islamic law, customary contextual laws, and appropriate amendment of family laws. The intersectionality approach could contribute markedly to custodianship.

Further amendments need to be made to divorce laws, as trafficked and exploited wives need the right to apply for a divorce without returning the *mahur*, if it is proven that the husband is

sexually exploiting her for profit. Majida explained how the women's association and administration of criminal justice paid the *mahur* for the husband during the court litigation for divorce. Women should have the right to apply for a divorce and not return the *mahur* to the offending husband if she was identified as a trafficked female by the criminal or social justice administration.

The administration of criminal and social justice fails to provide health services for the un-rescued sex trafficking victims and exploited sex workers. Future amendments that would enforce obligations on hospitals to provide health services is vital.

Doing further research involving the discipline of psychology to understand the post-traumatic stress disorders (PTSD) that women experience if they were sex trafficked or exploited for sex trade, can influence the development of service provision. Rawan said that Jordan lacked service providers who could understand the mental disorders that women suffer due to PTSD. I recommend the employment of service providers who understand PTSD affecting victims who attend clinics. Survivors need empowering.

Understanding honour, shame and stigma as culturally specific matters is necessary for recommending an appropriate way for servicing the victims of sex trafficking who do not wish to raise a complaint against their perpetrators.

Understanding the role of NGOs required knowing whether the administration of criminal and social justice in Jordan was capable of protecting sex trafficked females and exploited sex workers. I argue that comprehensive research that focuses on NGOs and legal clinics in Jordan regarding providing services for sex trafficked females is crucial to advance change. I have also argued that service providers are disempowered, unable to protect sex trafficked victim as they

mostly provide services for other human trafficking victims. Some service providers also have less contact with sex trafficked victims. However, when they do have contact, they also provide services and advice for females who do not wish to exit sex work, despite whether they are exploited or forced to do sex work. The situation confirms the importance of understanding the role of NGOs, knowing that they are closer and more accessible than government service-providers to sex trafficked females and exploited sex workers.

Further research on service providers and the 'above and below' approach would aid an understanding of their role as private outreach enterprises. I recommend further research on NGO service provision in light of the findings in Chapter VII.

Research on NGO and refugee camps was impossible in this study given ethical reasons and the potential risks. Unfortunately, finding a networker from among my list of contacts who could link me with a UN person provided a challenge. I was curious to know what the UN Refugee Special Rapporteur's role was in service provision. As I explained in chapter VI, the UN Refugee Agency was arranging for residency in another Arab country for Zahra, the refugee girl who was married off to 21 men. What is the role of the UN Refugee Agency in providing services for Syrian refugees who are sex trafficked? Its role is limited to assisting refugees only; therefore, the role does not extend to all of the categories of exploited women and girl discussed in this research. A pressing need is for further research to understand the intersectional discrimination of women who belong to vulnerable groups.

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APPENDICES

At the request of the author, the Appendices are not included in this version of the thesis.