

# The Right of Women to Equality in the Palestinian Basic Law

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**How to cite this paper:** Mahmmoud, A., & Daraj, O. (2022). The Right of Women to Equality in the Palestinian Basic Law. *Open Journal of Social Sciences*, 10, 1-10. <https://doi.org/10.4236/jss.2022.109001>

**Received:** June 2, 2022

**Accepted:** July 31, 2022

**Published:** August 3, 2022

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## Abstract

This study revolves around the right of women to equality in the Palestinian Basic Law, and stems from the importance of the study in evaluating the basic rights contained in the Palestinian Basic Law and their compatibility with international conventions. This study focuses on answering the following question, which is to what extent the right to equality for women in the law corresponds Basic with international conventions and national legislation? Consequently, the study aims to shed light on the basic rights of women in the Palestinian Basic Law, and to evaluate those rights, with the importance of adhering to their application in internal legislation, with reference to the reference of the Constitutional Court when considering the constitutionality of legal texts in the applicable legislation related to women, and the researchers followed the descriptive approach. And one of the most important findings of this study is that the Palestinian constitutional legislator equated women and men in rights and duties, which is represented by the regular legislation that came in harmony with this trend. The most important recommendation reached by the study is the necessity of providing an appropriate climate to support the values and principles of equality and affirming the principle of full citizenship to achieve the actual participation of women in political life away from all discrimination.

## Keywords

Palestinian Basic Law, Equality, Women, Discrimination

## 1. Introduction

Palestinian women are considered to have played a major role in raising generations throughout the long history of Palestine. The contemporary feminist

movement began in 1929, when the first Palestinian women's conference was held in Jerusalem, from which the Executive Committee of the Arab Women's Association emerged, and then in the same year the Arab Women's Union was established. In Jerusalem, and another in Nablus, and in the period 1948-1967, many women's charitable institutions were active, such as orphanages, elderly care centers and others, and in 1965 the General Union of Palestinian Women was established (Fleischmann, 2003).

The real breakthrough in the level of Palestinian women's participation in political life began after the formation of the "Palestine Liberation Organization" in 1964, which was followed by the formation of the "General Union of Palestinian Women". Palestinian women actively participated in the Palestinian national movement and played an important role in national activities and events. Palestinian women have become better off than their counterparts in many Arab and Islamic countries, as they entered the field of education, in addition to the field of work, to form half of the workforce in Palestinian society, and have assumed higher leadership positions, including: the minister, including a member of parliament, a judge, a doctor and a lawyer, and with the establishment of the Palestinian National Authority, incited the Palestinian legislator to include women's rights in national legislation, most notably the Palestinian Basic Law, considering them as

**The problem of the study:**

The study revolves around the answer to the following question:

To what extent does the right to equality for women in the Basic Law correspond to international conventions and national legislation?

How much will this study answer the following question:

What are the constitutional guarantees of these rights?

**Objectives of the study:**

The study aims to shed light on the basic rights of women in the Palestinian Basic Law, and to evaluate those rights, with the importance of commitment to their application in domestic legislation, with reference to the reference of the Constitutional Court when considering the constitutionality of legal texts in the applicable legislation related to women.

**Study methodology:**

This study is based on the analytical descriptive approach of the legal texts related to the basic rights of Palestinian women contained in the Palestinian Basic Law of 2003, and extracting the will of the legislator from it. It is also based on some important international agreements in the field of basic women's rights. and legal books.

**Study plan**

The first requirement: equality before the law.

The second requirement: equality before the courts.

The third requirement: Equality in the civil service.

Fourth requirement: equality in public burdens.

## 2. The First Requirement: Equality before the Law

The principle of equality means the absence of any preferential treatment between the parties to legal relations, in different democratic systems, which raises the status of the individual. His concept is focused on equality in legal positions for those whose legal positions are similar (Acemoglu & Wolitzky, 2021) while democracies with socialist systems focus on actual equality between individuals (Kiosks, 1987) not legal. Equality is detailed in the Universal Declaration of Human Rights of 1948, and all international agreements on human rights, and breaking it represents a violation of international standards, and has become one of the important principles on which the constitutions of modern democratic countries are based, and international and national legislation guarantees the right to resort to justice in the event of a violation of this principle (Al-Masaeed, 2014).

Equality before the law means that all citizens are equal before the law, and there is no discrimination or discrimination in the application of the law to them for any reason, whether on account of sex, religion, race or color ... that is, that the same legal rules apply to everyone, whether with regard to the legal protection that it conferred on them. Or by the punishment it imposes, and the lack of differentiation in treatment between those in the same legal position, who are people whose legal conditions and situations are similar and are treated on an equal footing without preference for some at the expense of others.

What is meant by equality before the law is not actual equality in conditions of ordinary life, but rather that it is intended to obtain equal protection of the law for all without discrimination in treatment, or in the application of the provisions of the law to them. The International Covenant on Civil and Political Rights of 1966 in Article Two of it has been obligated, provided that Each State Party undertakes In this covenant to respect the rights recognized therein, and by guaranteeing these rights for all individuals in its territory and within its jurisdiction, without any discrimination on the grounds of race, color, sex, language, religion, political or non-political opinion, national origin or Social, wealth, lineage, or other reasons, as each state party to this covenant undertakes, if its existing legislative or non-legislative measures do not actually guarantee the realization of the rights recognized in this covenant, that they are taken, in accordance with its constitutional procedures and the provisions of this The Covenant, whether legislative or other measures necessary for this realization.

The Independence Document, issued by the Palestinian National Council in 1988 at its nineteenth session in Algeria—constituted an important constitutional basis for the realization of Palestinian women's rights. In rights, their religious and political beliefs and their human dignity are preserved under a democratic parliamentary system based on freedom of opinion and other opinion, freedom to form parties and sponsor the majority, for the rights of the minority ... This document also stipulates social justice, equality, and non-discrimination in public rights. On the basis of race, color, or religion, or between women and men

under a constitution that believes in the rule of law and an independent judiciary, noting that there is what is called positive discrimination in favor of women, which does not contradict the principle of non-discrimination and full equality, as the physical and health nature of women needs Such discrimination, represented by maternity and childbirth leave, etc., as well as the (quota) system in the elections, which gives a quota for women as a guarantee for women's representation in local and parliamentary councils (Najim, 2016; Al-Masalha, 2007).

By carefully examining this text, it becomes clear to us that this document provides for guaranteeing equal rights for women in a democratic, parliamentary and pluralistic system, in addition to its affirmation that people are equal before the law.

Thus, we can say that the Independence Document charted a legal trend based on fairness for women, based on the legitimacy of human rights and the relevant international agreements that do not contradict Islamic law.

Noting that there is a defect in the legislation governing women's rights, you may find that there are legislations that distinguish men from women, and from historical periods prior to the approval of the Palestinian Basic Law and are still in force<sup>1</sup>, in addition to that there is positive discrimination in favor of women in some of the regulatory legislations, such as the Labor Law No. 7 of 2000, Civil Service Law No. 4 of 1998 and its amendments, but these rights take into account the nature of a woman's body, and her health conditions, especially in the stage of pregnancy and motherhood, which is in line with international standards in this field.

### 3. The Second Requirement: Equality before the Judiciary

Citizens, whether men or women, are all equal before the judiciary, and it is the right of every individual to decide on any criminal charge against him or his rights and obligations in any civil lawsuit that his case is subject to fair and public consideration by a competent (Mallokhia, 2012), independent and impartial court established by virtue of The law. Every person convicted of a crime has the right, according to the law, to a higher court to review his conviction and punishment.

Equality before the judiciary and non-discrimination between litigants is one of the most important principles on which the judiciary is based, as it achieves people's confidence and reassurance in the judiciary (Rand, 1951).

The Palestinian Basic Law (Darraj, 2017), Article 9 of it stipulates that (Palestinians are equal before the law and the judiciary), and Article 30 of it stipulates the following: 1) Litigation is a safeguarded and guaranteed right for all people, and every Palestinian has the right to resort to his natural judge, and the law regulates Litigation procedures to ensure speedy adjudication of cases. In order for this right to be effective, the Palestinian Basic Law has ensured that it is. 2) It is prohibited to stipulate in the laws that any decision or administrative action be immunized from judicial oversight. 3) Judicial error results in compensation

<sup>1</sup>Jordanian Personal Status Law No. 61 of 1976, and Jordanian Penal Code No. 16 of 1960.

from the National Authority. The law defines its conditions and modalities.

The meaning of equality before the judiciary does not mean the impermissibility of having different courts of different types of disputes or the different nature of crimes (Badawi, 1972).

With regard to women, the Palestinian legislator did not distinguish between women and men with regard to the judiciary (Kanaan, 2008), whether the regular judiciary or the legal judiciary, and here it is noted that equality before the judiciary means that women can file civil lawsuits and file complaints before the prosecution, thus making the Palestinian legislator equal to men In resorting to the Palestinian judiciary of all kinds and bicycles.

Likewise, the legislation governing criminal and civil procedures before the courts did not distinguish between men and women, with the exception of what is stated in Article (414) of the Palestinian Criminal Procedures Law No. (3) of 2001, which states the following: “The death sentence may not be executed against women. The pregnant woman, and if she gives birth to a live child, the court that issued the ruling shall award the death penalty to life imprisonment”.

#### **4. The Third Requirement: Equality in Front of Public Jobs**

The principle of equal access to public office is a manifestation of equality between individuals in public rights and duties. This principle has become a basis for assuming public office in all democratic countries. This principle means providing equality and equal opportunities for all citizens without causing a difference of gender, religion, political opinion or Race or disability is a reason for excluding any citizen who holds a public office as long as the conditions required by the law are in place, whether when applying for and joining public positions, or during their exercise in terms of benefits, rights and duties established by law, which is confirmed by the Universal Declaration of Human Rights In Article 23, which indicated that every person has the right to work, to the freedom to choose his work, to just and favorable conditions of work, to protection from unemployment, and to all individuals, without any discrimination, the right to equal pay for equal work, and everyone who works has the right to remuneration. Just and satisfactory, ensuring for himself and his family an existence worthy of human dignity, and supplemented, when necessary, by other means of social protection. Everyone has the right to form and join trade unions with others in order to protect his interests, In the same context, the CEDAW Agreement came in Article 1 of 1979, which indicated that any discrimination, exclusion or restriction is based on gender and has an effect or purpose on weakening and nullifying the recognition, practice, and enjoyment of women of all their human rights and political, economic, social, and cultural freedoms, Civil and all other freedoms, regardless of their marital status and according to one basis, which is equality between men and women.

This is what the Palestinian Basic Law guarantees this right to all citizens on the basis of equal opportunities, as Article (26) paragraph (4) of it stipulates that:

“Palestinians have the right to participate in political life, individuals and groups, and in particular they have the following rights: To hold public positions and positions on The rule of equal opportunity”.

In regulating rights and freedoms, the legislator must not distinguish between citizens on the basis of race, gender, color, religion, political opinion, or disability, which are images that the legislator did not specifically want, but rather mentioned them as being the most common in action (Boudarham, 2019; Al-Mohammadi Bawadry, 2005).

It is noted from the provisions of the Basic Law that the Palestinian legislator did not distinguish between men and women in assuming public positions. Rather, Civil Service Law No. (4) of 1998 and its amendments stipulated the conditions for appointment to the civil service, as its provisions are consistent with what is stated in the Basic Law, as well as What is stated in the executive regulations related to the Civil Service Law No. (45) of 2005.

## **5. Fourth Requirement: Equality in Front of Public Burdens**

The principle of equality does not only apply in the field of public rights, but extends to include public burdens as well. Public burdens include taxes, fees and all financial burdens imposed on individuals, as stipulated in Article (88) of the Palestinian Basic Law (imposing public taxes and fees, and amending and canceling them, It can only be by virtue of a law, and no one is exempted from performing all or some of them, except in the cases specified in the law)<sup>2</sup>.

Equality in taxes is necessary for different incomes, and equality is only achieved after applying the rule of individuals' contribution to taxes according to their income and wealth, as it is unreasonable to impose an equal tax between owners of small incomes and those with large incomes, or for the tax to be equal between owners of small capitals or owners of capital. Big money, Equality here lies in the amount of income or wealth.

The principle of equality in front of public burdens requires that all beneficiaries be treated in the same manner without favoring some over others for reasons related to sex, color, religion, or other reasons. Hence, there should be no preference in the field of use between a person and a person, and a group and another who meet the conditions of public burdens (Dallah, 2016).

It is also noted that the Palestinian legislator equated the public burdens between men and women, which is a constitutional rule, and it is not permissible to agree to violate it, and all the legislation regulating the issue of fees and taxes has been consistent with the constitutional call made by the Palestinian legislator, which is referred to in the first article of the decision by Law No. (8) for the

<sup>2</sup>Article 2 of the Universal Declaration of Human Rights in 1948 stipulated that: Every person has the right to enjoy all the rights and freedoms mentioned in this declaration, without discrimination of any kind, especially discrimination on the grounds of race, color, sex, language, religion, political or non-political opinion, national or social origin, or wealth. Or birth, or any other position. Moreover, discrimination is not permissible on the basis of the political, legal or international status of the country or territory to which the person belongs, whether it is independent, subject to guardianship, not enjoying self-rule, or subject to any other restriction on his sovereignty.

year 2011 regarding the income tax regarding the taxpayer, which stipulated the following:

The following terms and expressions contained in this Law by Decree shall have the meanings assigned to them below, unless the context indicates otherwise: The National Authority: The Palestinian National Authority. Minister: The Minister of Finance. Department: The Income Tax Department. Director: The Director General of the Department. Tax: Income tax imposed pursuant to the provisions of this Law by Decree. Estimator: Any employee or any employee committee authorized or authorized in writing by the director to conduct any tax assessment or audit in accordance with the provisions of this Law by Decree. Person: A natural or legal person. Taxpayer: Every person is obligated to pay, withhold, or supply tax in accordance with the provisions of this Law by Decree. Natural person: the individual or partner in charge of a solidarity company, a simple partnership company, or any companies of persons specified by law.

It is noted from this text that the definition of the taxpayer includes a man and a woman, and therefore the Palestinian legislator did not distinguish between a man and a woman, and in the same sense the texts of the Regular Court Fees Law No. (1) of 2003 came in Article (5), where it stated the following: "The team pays The person who filed the lawsuit or the appeal Fees payable for any lawsuit or appeal filed before any court unless otherwise stipulated, as well as what was stated in Article 1 regarding the definition of the taxpayer in Law No. (1) of 1997 regarding Palestinian local bodies, which came on the following: As follows: The following terms and expressions mentioned in this law shall have the meanings assigned to them below unless the context indicates otherwise. The Ministry: Ministry of Local Government, Minister: Minister of Local Government, Local Authority: Unit Local government within a specific geographical and administrative scope, the council: the local body council that includes the municipal council, the local council, the village council, the administrative committee, the development committee, or any other council formed in accordance with the provisions of this law and consists of the president and elected members, the president: the elected chairman of the local authority council Member: He is the elected member of the local council, the resident: the Palestinian citizen residing within the area of a local body and has a permanent residence or work in it, the taxpayer: any person for whom an amount is due to the local authority according to this law or any other legislation (Stockdale, 2020).

There, it is noticed that the Palestinian legislator equated the taxpayers within the scope of the local body, and thus did not distinguish between men and women, as it can be concluded from the taxpayer definition that he addressed a public speech without any discrimination, and therefore these legislations are in harmony with the Palestinian Basic Law of 2003 and its amendments.

## 6. Results

The Palestinian Basic Law of 2003 gave a set of rights and freedoms for men and

women in general, as Article 9 of the aforementioned Basic Law states that: Palestinians are before the law and the judiciary, regardless of whether there is any discrimination between them because of race, gender, color, religion, political opinion, or disability. All rights and public freedoms mentioned include men and women.

Consequently, that article formed a fixed constitutional rule indicating the need for equality between men and women, and therefore no domestic legislation may contravene that rule.

## **7. Conclusion**

1) The Palestinian constitutional legislator equated women and men with respect to rights and duties, which is represented by regular legislation, which came in harmony with this approach.

2) Positive discrimination in favor of women in regular legislation does not contradict the principle of equality contained in the Palestinian Basic Law, and is consistent with international standards.

3) The Palestinian legislator did not distinguish between women and men working in the acquisition of rights, especially the right to public jobs and positions.

4) The provisions related to the rights and duties of women are in conformity with the international conventions that Palestine has ratified.

5) Most of the legislations in Palestine are compatible with the right to equality for women contained in the Basic Law.

## **Recommendations**

1) Promote a culture of equality in rights and duties between men and women in schools, public institutions, universities and academic curricula.

2) The need to amend the Civil Service Law so that there is positive discrimination in favor of women, especially with regard to the right to raise children and follow them up.

3) The necessity to amend the Labor Law so that there is positive discrimination in favor of women, especially with regard to the right to raise children and follow them up.

4) Receive complaints about cases of discrimination against women, consider them, and issue recommendations regarding them to the supervisory authorities.

5) The necessity to provide an appropriate climate to support the values and principles of equality and to affirm the principle of full citizenship to achieve the effective participation of women in political life, away from all discrimination.

## **Conflicts of Interest**

The authors declare no conflicts of interest regarding the publication of this paper.



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