

# كسر القوالب Breaking the mold

#Breaking\_The\_Mold

## Arab Civil Society Actors and their Quest to Influence Policy-Making

Country: Iraq

### Personal Status Law in Iraq

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#### INTRODUCTION

In any country, personal status is an important issue for it represents the lives, futures, families and children of individuals. Briefly, it expresses the future and destiny of a country. Our first issue in this research is the Iraqi Personal Status Law of 1959 and the attempts of political-religious parties to change or make it invalid, and civil society organizations' role in defending it as it has many advantages. It is a civil law that applies to all religions and sects, making it one of the pillars of Iraqi national unity. It includes articles that do justice to Iraqi women and protect the family and the child, making it one of the Iraqi laws' feelings of pride<sup>1</sup>.

<sup>1</sup> The Iraqi Personal Status Law of 1959 had several advantages, the most important of which are:

- Full capacity to constitute a marriage requires a sound mind and completing eighteen years of age. (Article 7, Paragraph 1). A judge may permit the marriage of a fifteen-year-old if he finds this absolutely necessary. Permission shall be contingent upon lawful maturity and physical capacity. (Article 8, Paragraph 2).
- No relatives or third party may coerce any person, male or female, to marry without consent. Coerced marriages shall be considered null and void, if the marriage was not consummated. No relatives or third party may prevent the marriage of individuals qualified for marriage in accordance with the provisions of this Law (Article 9, Paragraph 1).
- Anyone violating the provisions of Paragraph 1 of Article 9 shall be punishable with imprisonment for a maximum of three years and/or a fine, if it is a first degree relative. If it is otherwise, the penalty shall be imprisonment for a maximum of ten years or detention for a minimum of three years. (Article 9, Paragraph 2).
- The Sharia Court or the Personal Status Court may notify the investigative authorities to take legal action against violators of the provisions of Paragraph 1 of this Article. They may detain him to guarantee appearance before these authorities. Anyone subject to coercion or prohibition may resort to the investigative authorities immediately in this regard. (Article 9, Paragraph 3).
- The mother is more deserving of the custody and upbringing of the child, as long as the marriage is valid and after separation, unless the child in custody is harmed by this measure. (Article 57 paragraph 1).
- The custody of the divorced mother shall remain valid after her marriage (Article 57 Paragraph 2). If the husband divorces his wife and the court finds that the husband was arbitrary in the divorce, which resulted in causing harm to the wife, the court

#### SELECTED CASE'S BACKGROUND

According to Preti Taneja (2009, p. 97), the Iraqi Personal Status Law No. 188 of 1959 is one of the most advanced personal status laws in the Arab and Islamic world and a factor in the unity of the Iraqi people. The Iraq Institute for Strategic Studies (2005) states that after 46 years of stability in the Iraqi family based on the Iraqi Personal Status Law, the Governing Council issued in 2003 Resolution No. 137 to annul the Iraqi Personal Status Law and reinstate the sectarian judiciary. However, it was annulled in 2004 after civil society organizations' objections, some parliamentary and governmental bodies, and academic personalities.

Furthermore, Dr. Rashid Al-Khayoun explained (2014, p. 108-109) that a comparison of personal status laws in some countries shows that some countries that consider themselves Islamic implement a single civil personal status law in their Sharia courts, particularly in matters of inheritance, polygamy, the permissibility of women's legal status, etc. Sulaiman Taqi al-Din (2013, Bidayat Magazine) believes that this includes political wisdom and legal firmness. Civil Law acquires its importance as an affirmation of the state's authority over any other authority. It also represents the rule of youth and a protective culture of citizen's behavior because it implies recognition of the direct relationship between citizen and the state and the promotion of citizenship rights at the expense of sectarians' concept.

may, at her request, order the husband to pay compensation that is proportionate to his financial circumstances and degree of arbitrariness, assessed as a lump sum. This may not exceed her alimony for two years, in addition to her other established rights. (Article 39 Paragraph 3). The other rights mean what was stipulated in the law on the right of a divorced woman to housing No. 77 of 1983, which includes (The court examining the divorce or separation lawsuit shall ask the wife whether she wants to remain resident after the divorce or separation in the house or apartment that she used to live with her husband independently if it is owned by him in whole or in part, or it was rented by him, and the court shall decide on this point with the final ruling in the case... etc.). Iraq Personal Status Law of 1959.

After passing the new Iraqi Constitution of 2005, civil society organizations objected to Article 41 of it because it reinstated Iraqis' personal status according to their religious and sectarian affiliations (Iraqis are free to adhere to their personal status according to their religions, sects, beliefs or choices). It is mentioned Dr. Abdul Salam Ibrahim Baghdadi, according to Dr. Rashid Al-Khayoun (2006, p. 8) that the annulment of the Personal Status Law No. 188 of 1959 aimed at unifying the provisions of Islamic jurisprudence beliefs in Iraq to be consistent with modernity, and reinstate the personal status of Iraqis as they were before the establishment of the Iraqi state.

Therefore, the Iraqi civil society organizations in 2006 organized a wide campaign to include Article 41 of the Constitution among the controversial articles in the Parliamentary Committee for the Amendment of the Constitution, which need to be studied and reconsidered. Working on this Article was suspended, and it has not been implemented. However, as citizens submitted cases to the Federal Court to request approval in their personal status, some supported it, but the Federal Court rejected the requests. Nevertheless, the difficult security situation in the country weakened the rule of law. It increased the influence and dominance of tribal customs and traditions and religious fatwas, as the cases of non-registered marriage contracts spread, as well as and circumvention of the Personal Status Law of 1959, which prohibits the marriage contract outside the court and punishes everyone who violates this. After the clergyman requested the marriage contract registered in the court before the legal, religious marriage was concluded, he started to request the religious contract before registering the marriage in court.

"When we raised this issue before a judge, he said that he is afraid of being killed," said Hanaa Adwar in a personal interview (2018). Adwar adds: "Temporary marriages have increased based on some religious fatwas despite its negative consequences on the wife and her children, in addition to the child marriage under the age of 15 outside the court, while the father or husband comes after two years to ratify the contract in court in exchange for a small fine, and it has become a phenomenon allowed by the courts, due to the presence of children. Some clans no longer recognize the woman's divorce if it occurs through the court while exceeding the terms of marriage, especially the medical examination has led to several problems, especially as the examination shows the girl's physical eligibility for marriage and reveals hereditary diseases. The Iraq Population Policy document indicated that one of the challenges facing the health of Iraq's population is the undocumented deaths among young mothers and children. Subsequently, judges and courts hesitated to consider the wife's cases of judicial separation. Civil society organizations raised the issue before the Supreme Judicial Council more than once, especially that many cases of separation are rejected if submitted by the wife and are executed quickly if the husband submits them, thus increasing the cases of divorce in which the wife loses all her rights, as well as the rate of arbitrary divorce. In the end, marriage has been subjected to many disorders. In many cases, particularly early marriage, it does not last for more than two years.



On March 18, 2014, the Minister of Justice in the second Maliki government presented the Jaafari Personal Status Law bill, which included many articles and paragraphs, which, according to many researchers, academics, lawyers, and parliamentary and governmental bodies, if applied, will lead to several problems at the level of the state and institutions of Iraqi society, especially mother and child<sup>2</sup>.

According to the Iraqi Al-Amal Association (2015, p. 5-6), civil society organizations, foremost of which are the Iraqi Women's Network and more than 120 specialists in the judiciary and Law, political forces, members of Parliament, cultural, media and social figures, worked to annul the bill<sup>3</sup>. In a statement issued on the occasion of International Women's Day, the representative of the United Nations in Iraq, Nikolai Mladenov, expressed the position of the international organization, which indicates that the Jaafari Personal Status Law will contribute to destroying the Iraqi national identity and endangering the unity of national legislation, and will have a negative impact on the achievements made to protect and develop women's rights protected by the Constitution.

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2 According to Dr. Bushra Al-Abdi, the most important defects of the law at the state and society level are as follows:

-1 Permission to draft several laws to regulate the personal status of Iraqis, with all the chaos and waste of public money. If approved, other sects and religions will demand their own law as well. Thus, divisions increase and become codified and rooted in Iraqi society, politically and socially.  
-2 The draft resolution included: Consultation with the religious authorities, but there are many authorities, so how will consultation and agreement be reached? Or will a law be enacted for each reference? Thus, problems and differences will arise between the one doctrine

3 With the Jaafari Personal Status Law bill, the Jaafari Judiciary Law was issued, which is another chapter for spending and budgeting the salaries of workers in this new judicial apparatus, and it will make the rest of the sects to work on issuing and having their own laws, judicial apparatus, budget, administrative cadres and salaries.

-4 Its contradiction with the text of Article 14 of the Iraqi Constitution of 2005: Iraqis are equal before the law without discrimination based on sex, race, nationality, origin, color, religion, sect, belief, opinion, or economic and social status. (Personal interview with Dr. Bushra Al-Obaidi, member of the High Commission for Human Rights, 2015/6/6).

(\*\*) The Women's Organization for the Good of Women, the Iraqi Journalists Forum, the Women and the Future Organization, the Advancement Center for Women, the Baghdad Women's Association, the Chaldean Women's Association, the Inana Women's Caucus, the Women for Peace Organization, the Burj Babel Organization, the Hope Center for Educational Guidance, Association Al-Kawthar Children's Association, Iraqi Women's Association, Dar Al-Khebra Organization, Al-Mada Association for Development and Cultural Cooperation, Women's Committee for Teachers of Iraq, Asyad for Humanity Organization, Tammuz Organization for Social Development, Al-Rafidain Women's Alliance, Women Empowerment Organization, Bint Al-Rafidain Organization, Warfin Media Foundation, Al-Amal Association Al-Iraqiya, Views on the Jaafari Personal Status Bill, Baghdad, 2015, p. 17-11.

Whoever follows-up with the draft Jaafari Personal Status Law can notice that it included many articles that deprive the Iraqi women of their dignity and their rights as a citizen and a human being, and allow the violation of child innocence by lowering the marriage age to seven (Articles 43, 154). The wife is also forbidden to inherit what her husband leaves as value or actual lands (Article 213), while the husband inherits from all that his deceased wife leaves (Article 212). Another article (53) provides equality for an adult girl, regardless of her legal status, whether a university professor or a worker, and classifies her as a child and an insane woman who is handled by the father or grandfather, in addition to the prohibition of marriage to non-Muslim women (Article 36), and other articles that deprived the woman of humanity in topics such as enjoyment, martyrdom, and custody of children.

## IMPORTANCE OF STUDY

Whoever reads this paper will be able to know:

- The active and influential civil forces in Iraqi society.
- Being closely acquainted with some of the draft laws that were submitted to regulate personal status instead of the Iraqi Personal Status Law of 1959 had repercussions on women's status and the Iraqi national unity.
- Interaction among civil society institutions, the people, the government and international organizations.

## STUDY METHODOLOGY

The research depends on the historical method and the comparative method mainly, using other secondary approaches. The research was written based on the follow-up of the Iraqi Al-Amal Association's activities and the Iraqi Women's Network mainly, in addition to the other civil organizations that it worked with. Hana Adwar held a long meeting at the headquarters of the association, founded in 1992, and another meeting with Amal Kabbashi, coordinator of the Iraqi Women Network that was established in 2004, and two meetings with Dr. Bushra Al-Obeidi, member of the High Commissioner for Human Rights. The Iraqi Al-Amal Association (2015, p. 11-19) stated that Iraqi civil society organizations have responded to some parties' attempts to make the Civil Status Law invalid or annul it. More than 35 associations and organizations have worked in the civil movement, in addition to more than 88 government, academic and media personalities.

## PROBLEM'S TIMELINE

The period covered in this paper is between 2003 and 2017.

## STRATEGIES AND TACTICS

Hana Adwar (2018) stated that civil society organizations used several means and strategies in their activities to protect the Iraqi Civil Status Law of 1959 and reject the Jaafari Personal Status Law, the most important of which are:

- Usage of mass media and social movements.
- Submission of a memorandum to the Iraqi government calling for the Law's withdrawal, while the government agreed to refer it to the Parliament for discussion in December.
- The Iraqi Al-Amal Association documented what was stated in the "CEDAW" report in 2014 (2014, p. 25-24). In fact, the Iraqi Al-Amal Association, the Rafidian Women's Alliance and the No Violence Against Women group took advantage of submitting a report on Iraq to the Committee for the Elimination of All Forms of Discrimination Against Women, called CEDAW, which Iraq

ratified since 1986, and raised the issue in a report of civil society organizations to the committee in Geneva, which was scheduled to be presented in February 2014. Furthermore, a government delegation headed by the Minister of State for Women Affairs attended the Geneva discussion sessions. It was asked about the proposal of the Jaafari Personal Status Law and Article 41 of the Constitution. According to the convention committee's observations and recommendations, the CEDAW Committee was not satisfied with the answers. Among these observations is the committee's assertion that implementing Article 41 of the Constitution was at the expense of women's rights, as it permits the enactment of various articles that affect women's rights and consolidate the control of men in the family, and that the Jaafari law is a violation of the agreement. Therefore, the committee requested a review of the Constitution and the annulment of Article 41 of it to ensure gender equality according to the Convention and Article 14 of the Constitution and work immediately to withdraw the Jaafari Personal Status Law.

- Benefiting from International Women's Day, as civil society organizations worked during the celebration of International Women's Day on March 8 to raise the slogan "Iraqi women in mourning", and organized rallies in Kahramana Square and Al-Mutanabi Street, held meetings and conferences, and organized a protest in the Parliament when Osama al-Nujaifi was its president. He indicated at the time that the Parliament did not receive the bill from the government and that if it was received, he would review it to suit women's rights. Then, the campaign escalated and expanded to include several bodies, particularly the Minister of State for Women's Affairs.

Facing this movement, in 2014, the government withdrew the bill and postponed its consideration. The bill faced a unified position to annul it, with the participation of entities and figures from all over the country. Civil society organizations worked in an organized manner, which helped increase their influence on the Iraqi street and government institutions.

## INFLUENTIAL FACTORS AND TRANSFORMATIONAL MOMENT

Hana Adwar summarized the most important transformational moments in the course of the case as follows:

- International support: Civil society organizations sent a report on the Jaafari Personal Status Law to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its recommendations.
- International Women's Day: Taking advantage of International Women's Day (March 8) and raising the slogan "Iraqi women in mourning".
- Parliamentary and governmental support: Some government and parliamentary figures gave strength to civil society organizations by supporting them in terms of personal status issues.
- Fatwas of some religious authorities: The religious authorities did not welcome the Jaafari Personal Status Law and indicated that it lacks the legal and jurisprudential components, most notably Sheikh Bashir al-Najafi, who said that the draft law includes mistakes in the jurisprudential and legal formulas that make it impossible for jurisprudence to agree to it. He asserted that it is not what the authority adopted and did not review it. However, the figure, Hussain al-Sadr, said that there are doctrinal objections to the draft law. It is not a priority in the current situation; it is incorrect to impose a specific jurisprudential vision on those who follow other authorities. In addition, some media figures are against the bill.

## POLITICAL RESULTS

Article 137 of Resolution 37 issued in 2003 by civil society organizations was dropped due to their activities on February 27, 2003. The Governing Council voted to annul the Article on February 29, 2004, and it stipulated the following:

- Suspending the implementation of Article 41 of the Constitution and considering it one of the controversial articles.
- Withdrawal of the Jaafari Personal Status Law in 2017.
- In a personal interview with the coordinator of the Iraqi Women's Network, Amal Kabbashi (2018), she indicated that all attempts to make amendments to the Personal Status Law of 1959 that violate women's rights and diminish their humanity and dignity had been thwarted. It was confronted by civil society organizations represented by the Iraqi Women's Network (established in 2004). Many members of the former Parliament supported them, most notably Shurooq Al-Abayji and Alia Nassif, and the members of the Women's Committee and Kurdish Members of Parliament.

A questionnaire was conducted on the social network. Two questions were asked to the followers; The first was about the ability of a person under the age of adulthood to establish a stable family and raise children properly. Among them, almost 194 respondents, among them 84%, answered: I do not agree, while the rest was divided between neutral and agreed. The second question focused on whether having a civil personal status law, such as the Law of 1959, is better than having a personal status law that follows religions and sects; almost 192 people interacted with the question, and the answers were distributed as follows: 78% agree, 18% are neutral, and 4% do not agree. According to the results, it appears clear and at a high rate that Iraqi society rejects child marriage, whether male or female. It prefers a unified personal status law. The directions of civil society organizations concerning the subject of research were consistent with the Iraqi people's orientations, which greatly helped in the success of their work.

Despite all the successes, some Members of Parliament's attempts continued to pass laws or amendments that harm women or propose amendments to change the system of Iraqi laws. For instance, on March 12, 2017, the Member of Parliament, Jamila Al-Obaidi, proposed legislation that encourages polygamy by paying financial incentives. She began collecting the signatures of her fellows on the proposal to present it to the Presidency of Parliament. She explained that "the amendment provides for permitting polygamy provided that the age of the second wife has exceeded thirty".

In another interview with Dr. Bushra Al-Obaidi (2019) stated that earlier in 2019, a group of divorced men who had children demanded the amendment of Article 57 of the Civil Status Law of 1959. Their request was adopted by a member of the Legal Committee in the Parliament, claiming that Sharia has limited custody to two years. Still, in fact, it defined breastfeeding and not custody. It was also found that they are motivated by financial incentives to get rid of alimony, indifferent to what children will suffer when deprived of their mother.

Dr. Bushra Al-Obaidi stated that many civil activists and Members of Parliament visited the religious authorities in 2018, including Najafi Al-Bashir and the Al-Fayyad. They expressed their lack of opposition to the Personal Status Law of 1959, while the religious authority of Mr. Sistani indicated that it supports any law that established peace and security in society and combats violence.

## CONCLUSION

Iraqi society is torn between two parties. The first is civil, and the second is religious, and each has its own means by which it imposes its authority over society. Restricted religious forces have always stood against granting women their rights or making them equal to men. In contrast, Iraqi civil forces support women's human rights and lift injustice against them with their commitment to respect all religions and sects. What is new in the current Iraqi situation is the presence of political-religious parties that aim to achieve political interests by using religious means and seek to annul, modify or make the Iraqi Personal Status Law of 1959 invalid, while the civil forces adhere to the Law to ensure the rights of women and the family and preserve one of the pillars of Iraqi national unity in its highest forms relying on local and international support. So far, the civilian forces have succeeded in doing so, but there are fear and caution against repeating the process.

Among the observations worth noting is the existence of good relations among some Iraqi civil society organizations and some governmental and parliamentary bodies, which facilitated the work of these organizations, especially the measures taken to protect the Civil Status Law.

## LESSONS LEARNED

Despite the annulment of the Jaafari Personal Status Law, civil society organizations warn against repeating the attempt and find in taking some measures a guarantee and a necessity to protect women, childhood and the family in Iraq, based on past experiences that can be summarized as follows:

- Sustaining awareness and seeking amendments in the Iraqi Personal Status Law that serve women and keep pace with the times.
- Strengthening the authority of the judiciary and providing it with the necessary protection.
- Training and educating judges about women's issues as they are sensitive to violence against women and unequal marriage.
- Abolishing marriage offices outside the court, run by clerics, and turned into a business.
- Amending the formula defining marriage in Iraqi laws, especially that its current form emphasizes purely male control, as Article 3/1 in the Law of 1959 states that "Marriage is a contract between a man and a woman who is lawfully permissible to him, the purpose of which is to found a bond to procreate and live together" because marriage is affection and compassion, not a reproduction and human species. The noble Quran text confirms this in Surat Al-Rum (verse 21), "He ordained between you love and mercy". The spirit of law must develop and for the marriage to be at the level of partnership, especially as it currently focuses on the man as the head of the family and defines a woman's role as the housewife.



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## BREAKING THE MOLD PROJECT

In mid-2018, the "Civil Society Actors and Policymaking in the Arab World" program at IFI, with the support of Open Society Foundations, launched the second round of its extended research project "Arab Civil Society Actors and their Quest to Influence Policy-Making". This project mapped and analyzed the attempts of Arab civil society, in all its orientations, structures, and differences, to influence public policy across a variety of domains. This research produced 92 case studies outlining the role of civil society in impacting political, social, economic, gender, educational, health-related, and environmental policies in ten Arab countries: Lebanon, Syria, Palestine, Jordan, Egypt, Morocco, Tunisia, Yemen, and the Arab Gulf.

Over two dozen researchers and research groups from the above countries participated in this project, which was conducted over a year and a half. The results were reviewed by an advisory committee for methodology to ensure alignment with the project's goals, and were presented by the researchers in various themed sessions over the course of the two days.

## THE CIVIL SOCIETY ACTORS AND POLICY-MAKING PROGRAM

at the Issam Fares Institute for Public Policy and International Affairs at AUB, examines the role that civil society actors play in shaping and making policy. Specifically, the program focuses on the following aspects: how civil society actors organize themselves into advocacy coalitions; how policy networks are formed to influence policy processes and outcomes; and how policy research institutes contribute their research into policy. The program also explores the media's expanding role, which some claim has catalyzed the Uprisings throughout the region.

## THE ISSAM FARES INSTITUTE FOR PUBLIC POLICY AND INTERNATIONAL AFFAIRS AT THE AMERICAN UNIVERSITY OF BEIRUT

The Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut (AUB Policy Institute) is an independent, research-based, policy-oriented institute. Inaugurated in 2006, the Institute aims to harness, develop, and initiate policy relevant research in the Arab region. We are committed to expanding and deepening policy-relevant knowledge production in and about the Arab region; and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society and policy-makers.

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