

مركز البيدر للدراسات والتخطيط

Al-Baidar Center For Studies And Planning



Research Paper

# Amendment of the Personal Status Law A Thorough Legal and Social Perspective

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## **Introduction**

Discussions regarding the amendment of the Iraqi Personal Status Law started at the beginning of the drafting of the constitution, in compliance with its provisions and as an activation of the fundamental principles in which this topic was deliberated. Due to the sensitivity of the matter and the divergence of opinions on it, this was postponed repeatedly until the first reading for amending the Personal Status Law No. 188 of 1959 appeared after the vote to include it in the session agenda.

The first administrative codification of laws concerning personal status or family matters in Iraq dates to the early 20th century. However, issues related to personal status remained uncoded until 1917, when the Ottoman government issued a law on marriage and separation for Muslims, Christians, and Jews—each according to their codes and traditions—and named it “The Family Rights Law.” It justified this law by stating the need to abolish spiritual courts that are not subject to state oversight and to codify family provisions based on the traditions of various sects. This law, to a limited extent, recognized the jurisprudential differences among various sects and religions besides Islam. Some of its provisions remain in effect today in Lebanon.

## **General Overview**

The Islamic personal status laws currently in force in Arab countries were established through legislative compromises between religious jurisprudential authority and modern statutory legal systems. These compromises were not purely scholarly or legal but were often made in political contexts or as a reflection of social will, aligning with the prevailing political atmosphere at the time.

Consequently, many codes of personal status were issued in numerous Islamic

countries, with continuous amendments to some of their articles, and their contents vary from one code to another.

The first to use this term in Arabic Islamic jurisprudence at the beginning of the twentieth century was the Egyptian scholar Muhammad Qadri Basha, when he authored his book “Legal Provisions in Personal Status Affairs.” He codified it into 647 legal articles, drawing all from the predominant opinion in the Hanafi School, responding to the needs of Islamic judicial practice in Egypt, which is based on this Madhhab for its rulings upon Egyptian Muslims. This book gained popularity and spread throughout most Arab and Islamic countries, including Syria and Jordan.

As for Lebanon, the Personal Status Law varies from one sect to another, resulting in a varied collection of laws on matters such as rules of marriage, divorce, custody, and child visitation. For instance, in cases of divorce for Shia Muslims, their religious courts typically grant custody of children to fathers at the age of two for boys and at seven for girls.

As for the Kingdom of Saudi Arabia, the Hanbali madhhab is applied according to the authoritative jurisprudence in well-known and recognized jurisprudential works such as “Kashaf al-Qina” and “Ghayat al-Muntaha.” Their scholars prohibit codification. In Kuwait, the Personal Status Law was enacted in 1983 as Law No. 51, consisting of 157 articles drawn from various jurisprudential schools without restriction to a particular madhhab. Amendments were introduced by Law No. 66 of 2007, adding new articles, and in 1984 by Law No. 32/97 on personal status matters.

Similarly, in the Sultanate of Oman, the Personal Status Law was issued by Royal Decree No. 32/97 on 4 June 1997, based on the predominant opinion in

the Ibadi madhhab. In Qatar, the Family Law was enacted by Law No. 22 of 2006, with prior laws such as Law No. 21 of 1989 on the organization of marriage to foreigners and Law No. 40 of 2004. Official approval from the Shura Council came in 2014 for procedures regulating family issues, which uses the Hanbali school.

In the United Arab Emirates, the Federal Personal Status Law was presented as a draft in 1979. Its 455 articles were amended by Law No. 28 of 2005.

### **What the Amendment of the Personal Status Law Includes**

The amendment of the law comprises two articles. The first article amends the text of Article 2 of the Personal Status Law by adding a third paragraph, granting the Iraqi man and woman the option to apply the rules of the madhhab (jurisprudential school) they deem appropriate. The competent court must apply the relevant religious laws according to a compilation of religious legal rulings to be issued later.

The new amendment also obliges the “Scholarly Council in the Shiite Endowment Diwan and the Scholarly and Fatwa Council in the Sunni Endowment Diwan, in coordination with the State Council, to draft a compilation of religious rulings in personal status matters and submit it to the House of Representatives for approval within six months from the enforcement date of this law.”

The second article amends paragraph 5 of Article 10 of the Personal Status Law, dictating that the Personal Status Court validates marriage contracts concluded by adult Muslims before those authorized either religiously or legally by the judiciary or either Endowment Diwan (Shiite or Sunni) to conclude marriage contracts, provided the contract pillars are met.

## Objections to the Amendment of the Personal Status Law

### 1. “This law is regressive or Daesh-like; it allows for the legitimate rape of children.”

R e s p o n s e :

No provision in the proposed amendment legitimizes rape. Even in the existing Personal Status Law of 1959, which allows marriage below 18 years, Article 8/1 states:

“If someone who has completed 15 years of age requests marriage, the judge may permit it if he finds them competent and physically capable, after the approval of their legal guardian. If the guardian refuses, the judge asks him to provide consent within a specified period. If the guardian objects, and the objection is unsubstantiated, the judge authorizes the marriage.”

In addition, the age of 18 is the legal age of adulthood before the state, not the age for marriage eligibility. More than 71 countries worldwide allow marriage below 18 years, and the following is a clarifying table for some countries, noting that this is the age of permission, not obligation or compulsion.

Country	Age Females	Age Males
Venezuela	14	16
Niger	15	18
Mexico	14	16
Kyrgyzstan	10	13
Argentina	16	18
Saudi Arabia	10	12
Yemen	9	12
Iran	9	12

As for the United States of America, the law does not set a minimum age for marriage. However, it requires parental approval and judicial permission.

**2. “The country is drowning in wars and crises. More than 40% of its people are below the poverty line, and 123 billion dollars in public debt, and citizens do not have adequate healthcare.”**

#### **Response**

Yes, the country is indeed drowning in problems, which are dealt with sequentially, and its situations and services are being addressed continuously. Note, however, that organizing life is not related to these problems; life will not stop, and reforming daily affairs helps rid people of problems. Also, the poverty rate cited is inaccurate.

**3. “The amendment to the Personal Status Law is a setback for Iraqi women and would reproduce the so-called Jaafari Personal Status Law.”**

#### **Response**

There is no setback for Iraqi women. Rather, they are women of dignity—mothers, sisters, patient and courageous wives. The proposed law guarantees previously lost rights, such as their due alimony. It also grants them the right to represent themselves and divorce their husbands whenever they wish and grants them legal protection by registering their marriage instead of contracting it outside of the court without rights.

**4. “The law deprives women of rights and forces them to live with the husband’s family without objection, tearing apart family and social cohesion.”**

### **Response**

No such text exists in the proposed amendment. Rather, it gives the husband the right to accommodate his parents with him, which is a legitimate and humanitarian right before anything else. Even these right leaves to the discretion of the judge the consent of the wife.

### **5. “The law divides Iraqi society along sectarian and denominational lines.”**

### **Response**

The proposed law organizes the affairs of Iraqi society by Article 41 of the Constitution, which states: “Iraqis are free to adhere to their status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.”

Note that Personal Status Law No. 188 of 1959 also addressed society per their sects.

**6. “The law violates the principle of separation of powers provided for in Article 47 of the Constitution, as well as the independence of the judiciary as stipulated in Article 19/First, because it links the Personal Status Court with the Scholarly and Fatwa Council in the Sunni and Shiite Endowment Diwans.”**

### **Response**

There is no violation of the constitutional principle of separation of powers, because the addition of a paragraph to the first article, which already has two paragraphs, falls under the title of regulation. The original clause is discretionary for Muslims and is not mandatory; this discretionary clause directs the applicant’s desire toward a particular legal path from several options before the court, given the different schools within Islam. This discretionary request does not affect the court’s view, meaning the court follows the technical opinion issued by the compe-

tent authority, as is the case with DNA tests or handwriting comparisons, or forensic evidence, where the court seeks expert opinion and may seek a second opinion.

**7. “The law also conflicts with the recommendations of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), which included the recommendation to abolish Article 41 of the Iraqi Constitution.”**

### **Response**

There is no conflict, as discrimination against women is one thing and marriage is another matter entirely. It is acknowledged that Iraq is very delayed in acceding to the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages, which was opened for signature, ratification, and accession pursuant to General Assembly resolution 1763 A (XVII) of 7 November 1962.

Iraq should and still has a path open to accede to this convention and set the minimum age for marriage (for instance, 12 years), as many countries party to this convention have done so to comply with international treaties in this area, away from the ongoing polemics.

### **Conclusion**

From a drafting and legislative technique perspective, the proposal for amending the Personal Status Law does not appear to be complete; rather, one notes that the texts seem afraid of the reactions that may be issued by persons, organizations, or social groups who are far removed from Iraqi social realities and its ever-changing circumstances. The proposed amendment, in fact, fills many legislative gaps. I wish the proposal had been written more clearly, courageously, and frankly. This is our society and this is our creed. Notably, if the Iraqi legislator were to refer



to the articles of the 1917 Ottoman Family Rights Law, or to the legislator's version of 25 October 1917, he would find a better and more extensive organizational structure than what is desired through the intended amendment or even the current Personal Status Law.



**Research Identity**

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**Note:** The opinions expressed in this research do not necessarily reflect the views of the center, but only the opinions of its author.

## About center

Al-Baydar Center for Studies and Planning is a non-governmental and non-profit organization established in 2015 and registered with the NGO directorate in the general secretariat of the council of ministers in Baghdad.

The center seeks to contribute to developing the state and its institutions, by proposing ideas and practical solutions to the main problems and challenges facing the state, including improving public sector management, policies, and strategic planning, using reliable data and best practices. The center engages the relevant authorities in the state with regular meetings to support this objective and utilizes the support of international organizations dedicated to assisting Iraq's development. The center also seeks to support economic reforms, and sustainable development and provide technical assistance to the public and private sectors. The center also seeks to support the development of the private sector to provide job opportunities for citizens through training and upskilling, in a way that reduces dependence on government institutions and contributes to supporting and diversifying the country's economy.

The center aims to utilize the vast amount of potential in Iraq's human resources by organizing programs to prepare and develop promising young people, including leaders capable of proposing, adopting and implementing visions and future plans that advance society and preserve its value-system based on the commitment to a high moral standard and rejection of all types of corruption.

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