

Iraqi Women and the National Personal Status Law

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INTERVIEW WITH HANAA' EDWARD, SECRETARY GENERAL OF THE IRAQI ALAMAL ASSOCIATION & JUDGE SALEM RAWDAN AL-MOUSSAWI

In most Muslim countries, family or personal status legislation related to marriage, divorce, child custody and inheritance is based on Islamic Shari'a Law. This legislation which has a direct impact on the lives of women and men in Arab countries is usually determined by religious courts and clerics (or priests in the case of Christian minorities).

However, in 1959, Iraq contrary to most Arab countries, passed a personal status law by which the old shari'a courts were replaced with government-run personal status courts that passed judgments based on the new codified state law. While the law is based on religious sources, it is an amalgamation of the most liberal Islamic rules as well as some divergences. It restricts child marriages (by setting the legal age of marriage at 18 years), bans forced marriages and restricts polygamy; it curtails men's prerogatives in divorce, expands women's rights in divorce, extends child custody to mothers, and improves inheritance rights for women. It remains one of the most liberal law in the Arab world with respect to women's rights. Moreover, by eliminating the differential treatment of Sunnis and Shiites under the law, it does not differentiate between the various religious communities and thus sustains social and communal coexistence.

Since it was passed, the Iraqi personal status law has been opposed by many religious leaders, who believe that it contradicts Islamic Shari'a Law, and who object to the standardization of personal status laws to cover all sectarian communities. They consider that personal status matters should be dealt with by clerics and not civil servants.

In the few years since the fall of the Baathist regime, the question of 'reforming' the personal status legislation has increasingly veered away from improving women's rights, and has been dominated by clerics seeking to gain autonomy to implement Shari'a Law within their religious communities. They aim to transform state courts which currently rule on personal status matters to shari'a courts controlled by clerics.

There have been two threats to the unified personal status law. The first came in December 2003, when Abdel Aziz Al Hakim, head of the Islamic Supreme Council of Iraq (a religious Shiite political party), cancelled the personal status law through decree no. 137 during his term as president of the Interim Governing Council (now defunct). However, because of strong opposition from women, liberals, and Kurds within the Interim Governing Council, and because of opposition by women's groups and civil society organizations in general, the decision to cancel the law was revoked by then U.S. civilian governor Paul Bremer. Thus Personal Status Law no. 188 is still in effect until a new law is passed. Governing Council decree no. 137 would have transferred civil actions concerning family and personal law, including marriage, divorce, and inheritance, to the jurisdiction of clerics.

However, efforts to dismantle civil precedence in Iraqi family law continue. The most recent attack came in form of Article 41 of the new Iraqi constitution which echoes the defunct decree no. 137.

Article 41 of the new constitution specifies that Iraqi citizens “shall be free to determine their personal status according to their religion, sect, belief or individual. Furthermore, the inclusion of this article raises a fundamental question: should the 1959 Personal Status Law be reformed or should it be replaced by multiple personal status laws for each community?

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Hanaa' Edwar, Secretary General of the Iraqi Al Amal Association and a prominent women's rights activist in Iraq, fears that abolishing the current Personal Status Law will place family matters in the hands of religious authorities and will further increase divisions between religious groups. She believes that Iraq needs to abolish Article 41 of the constitution while preserving the current personal status law because otherwise there will be a risk of rupturing the unity of Iraqi society. Article 41 will increase communalism at the expense of unified citizenship.

In a conversation with the Heinrich Boell Stiftung (hbs) during a joint workshop organized by hbs and the Iraqi Al Amal Association in July 2009, Edwar said that Article 41 of the constitution completely contradicts Article 14 which states that all Iraqis are equal before the law and forbids any discrimination based on gender, race, religious, sect, etc. Thus Article 41 violates the unity of Iraqi national legislation. If Article 41 is passed, legislation would be fragmented. There is a contradiction between religious autonomy and equal rights for all citizens.

She also added: “Political parties should consider the suffering caused by the recent civil war: displacement, kidnappings, and killings based on sectarian identity. Do we want to deepen the situation by consecrating it in the constitution? Is it logical to return to pre-historic times? Are we going to respect human rights or violate them? Do we want to destroy society under religious and sectarian pretexts?”

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A recent ruling by Iraqi Judge Salem Rawdan Al-Moussawi which denied a man the right to marry a second wife is an example of exactly how personal status courts operate in Iraq. Al-Moussawi is an Iraqi judge specialized in personal status cases, and is the District Judge of Hay al Shaab personal status court in Baghdad. In July 2009, Al-Moussawi participated in a workshop organized by the Heinrich Boell Foundation and the Iraqi Al Amal Association on implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in national Iraqi laws. The details of the ruling, which refers to CEDAW, are summarized below.

First, the man petitioning to marry a second wife gave the following justifications for wanting a second wife: excessive household chores because of having four children; his current wife is very good friends with the woman he wants to marry (she testified that she has no problem at all with him marrying her friend); the potential second wife is divorced, and marriage to him would lift the injustice which divorced women or widows face in Iraq; he wants more children.

However, Al-Moussawi rejected the man's petition to marry a second wife, basing his judgement on the stipulations of the personal status law.

Firstly, the petitioner's justification that he needs a second wife to help with the housework was dismissed, because of his assumption that a wife's role is limited to household management and housework. This violates the legitimate and legal purpose of marriage as described in Article 33 of the personal status law which states that marriage should be based on affection, compassion and the common interest of building families. Secondly, the fact that the current wife was good friends with the potential second wife does not constitute legitimate grounds for a man to have a second wife

because, according to Al-Moussawi, friendship between humans is built on mutual amity and is not an opening to marry a wife's friend. It would also encourage him to marry his wife's other friends.

The man was also castigated for claiming that marrying a divorced woman would lift the injustice experienced by divorced women. Al-Moussawi considered that it was degrading to consider divorced women as being of an inferior social status, and that instead of pitying them men should respect their equal status in society as stipulated in the Iraqi Constitution and in CEDAW to which Iraq is a signatory party.

The ruling by Al Moussawi demonstrates the importance of having judges deal with issues such as divorce, marriage, and polygamy according to a properly codified law which treats everyone equally, instead of relying on the arbitrary decisions of clerics. The good news for activists fighting to preserve this unified personal status law is that the Islamist parties performed very poorly in the recent provincial elections and are likely to lose many seats in the upcoming parliamentary elections scheduled for March 7, 2010.

P.S.

* From Gender Training Workshop for Iraqi Judges on 4-9 July 2009, Heinrich Böll Foundation:
<http://www.boell-meo.org/web/52-263.html>

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