



Research

One Country, different legal systems; Ja'fari Personal Status Law can shake Iraq's legal framework?

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A 9 years old girl cannot have driving license and drive a lifeless machine-like car, yet because of amendments of personal status law and Ja'fari Personal Status Law, she may marry, bear child and become mother. Envision a country where the mothers are denied the right to raise their own children, their rights inside out marriage are in danger. Picture, a legal system so fractured, that divides its people by sect, yet no one satisfied with his/her rights. Imagine, a region, supposed to be safe out of all this, yet not guaranteed! Finally vision a generation raised on this battleground of contradictions! This is a quite reality written in to a law called Ja'fari Personal Status Law in Iraq.

2003 marked a pivotal turning point in the modern history of Iraq. Following 24 years of the rule of Saddam Hussein, the regime collapsed by U.S. lead coalition invasion, and resulted in overthrow the power of Ba'athist regime and end of the existing Sunni monopoly of state power. Post 2003 Iraq begun a long process of institutional and political reconstruction; thus, reconstructions were different because they were characterized by the inclusion of the groups who were marginalized during Saddam Hussein's power. This groups included; Kurds, Shi'a's, Christians, Yazidi's, etc. In the inception of this new country, every component wanted to sought to secure its rights within the legal framework and political landscape. Moreover, Shi'a leaders were among the first to pursue.

The first step and significant confrontation in the frame of the topic emerged when head of Iraqi Governing Council and leader of Supreme Council of Islamic Revolution of Iraq, Abdul Aziz al-Hakim issued Resolution No.137. The aim of the resolution was to abolish current Iraq personal status law (Law No.188 of 1959). The law had been derived from French civil code and harmonized between Shi'a and Sunni jurisprudence. This resolution didn't work in practice, and rendered null because Paul Bremer, the de facto chief civilian administrator of Iraq and head of the Coalition Provisional Authority refused to sign it. This annulment did not extinguish Shi'a leaders' ambition of reshaping the Iraq's legal framework in a way that aligns with their religious jurisprudence. Instead, it went to the draft of Iraq's constitution 2005, and successfully enshrined in Article 41 of the constitution, stating; all Iraqis are free to follow their personal status based on their religion, sect, beliefs, or choices, and this must be regulated by law. This article would later serve as a constitutional base, for the efforts resulted in introducing the Ja'fari's personal status law.

On the bases of the constitutional foundation mentioned, after eight years Hassan al-Shimmari, justice minister of the Iraq's government proposed Ja'fari's personal status law, the draft he introduced based on of Ja'fari's jurisprudence and it comprised 235 articles. He submitted it to the council of ministers of Iraqi

government on Oct 17, 2013 and subsequently approved on Dec 24, 2024. Yet, under the anti-advocacy and pressure of NGOs and INGOs, human rights organizations, activists and international bodies, the draft nullified and failed to pass Iraq's parliament. This was not the end, but four years later the proposal resurfaced in the same parliament, again under the pressure of the same groups mentioned, halted before make it to voting process.

The attempts to activate the draft or propose something similar were continuous. For instance, an attempt made in 2021 to amend Article 57 of personal status law of Iraq, it was concerning the custodial rights, but again it failed in advance. It remained dormant to 2025, when a self-described independent member of Iraqi parliament named Raad Hamdan al-Malki who is member of legal committee in the same time revived the Ja'fari personal status code with endorsement of 50 members of parliament. The draft referred to the Supreme Federal Judicial Council of Iraq, and it has been approved on Jan 21, 2025. Then, ratified by current Iraq's president on Feb 13, 2025, passed by Iraq's parliament on Aug 27, 2025 and validated by Iraq's Federal Court on Aug 31, 2025.

Now Ja'fari's personal status law formally embedded in the Iraq's legal framework, and awaiting full implementation.

The contrast of the law with Iraq legal frame work

One of the points worth highlighting is the sharp tension between Iraq's current legal frame work and the newly enacted personal status law (The Ja'fari Personal Status Law), at the time, there are two major contradictions, reflecting fundamental difference between the Ja'fari Personal Status Law and current legal frame work. The law places Marja'a which considered as external authority to Iraq legal framework, above the judiciary. This is clear undermining of legal autonomy. For instance, in the paragraph (b) of article (73) of the law, agreement of the third part which is (Marja'a) becomes a condition for the divorce. And in the paragraph (E) of Article (74) grants certain judicial powers to the third party, and obliging the courts of Iraq to comply with the decisions the third party is making. This contradicts article 87 of Iraq constitution which states: the judicial power is independent and is exercised by the courts, which must issue decisions according to the law. Another contradiction appears when a religious base will be base of law, and will act as only and one source of decision, because according to Iraqi legal frame work the legal texts and codes are the only source of decisions in courts, and in case of lack of a specific code the judge will depend of the related articles or judiciary explanations of the laws.

Another contradiction on the (Article 2 (3) (b).) of Ja'fari Personal Status law appears, because the article explains the request to application of rulings of Ja'fari Personal Status law on the marriages already finished the marriage process, once such a request has been made by one of the parties. Moreover, it leaves courts no choice only adhere the rulings of the law. This has been explained in the (Article 2 (3) (c).) of the law. And this retroactive application risks, and undermines the protected rights of the marriage under the personal status law No.188 of 1959. In principle for any law in Iraq legal framework to be applied retroactively, there must be a public interest to justify acceptance of such exception, but what is interesting here? there no public interest, yet the court remain with no choice only to accept the request. Moreover, it contrasts the Article 14 of Iraq constitution which guarantees the legal equality of all Iraqi's Infront of law because by establishing difference legal regimes for different sects legal quality will go under question.

What is difference about this law that makes center of discussion?

Ja'fari Personal Status law diverges from Iraq's personal status law 1959 (Law No.188), the key differences appears in the areas of marriage, validity and definition of marriage, deficiency, men's rights over wife, age of marriage, and polygamy. For instance, Ja'fari's personal status did not specified the age of marriage exactly saying this is legal age of marriage for men and women, yet it depends on Ja'fari's (Shia) Islamic jurisprudence, and this jurisprudence sets legal age at 15 for boys and nine for girls, in another way it explains that it may be decided upon when the signs of puberty appears which may change according to external factors including climate change and environmental issues, whereas the law No.188 prohibits marriage under 18, and permitting marriage at 15 only under special situations. In terms of marriage the Ja'fari Personal Status law restricts marriage of male and female Muslims with non-Muslims, while Law No.188 allows Muslim men to marry a women "of the book" and prohibits Muslim women to marry men "of the book".

The two laws also differ in treatment of marital incapacity and deficiencies. In law No.188 requires verification of verified medical committee to prove the deficiencies and marital incapacity. Conversely, in Articles 78 - 86 the Ja'fari Personal Status law allow divorce if one of the spouses has reproductive or physical incapacity, and this shall be proven by witness testimony and oaths in court. Regarding, the husband's power over his wife, article 101 of Ja'fari Personal Status law permits a man to enjoy the sexual relationship with his wife any time he wants so, and restricts women to leave the house or travel outside country without the man's permission, whereas the law No. 188 grants the wife greater personal autonomy and does not compel wives to act against their will

especially in sexual relationship. Finally, the Law No. 188 forbids men to practice polygamy without court's approval, and it allows second marriage only with judicial approval. While Ja'fari Personal Status law allows men to have multiple wives. And another difference is in the registration of marriage, in Ja'fari Personal Status law marriage can happen between male and female only by oral performance, without further approval of court and medical tests and legal documents, while in Law No. 188 marriage will be announced only when court certifies the necessary documents regarding the health and legality of both persons.

Towards a fragmented legal framework in Iraq

Sectarianism was not a new phenomenon in the history of Iraq's legal framework, and the framework or the legal system did not maintain a neutral stance before 2003, as the country was under the power of different minsets. Moreover, in the more recent history of the country, particularly after the collapse of Saddam Hussein's regime the country witnessed a great change in the dynamics. The period witnessed a mounting pressure among Iraq's political and religious components, each sought to secure its rights in the new legal framework under the umbrella of constitution. This attempt of representation gradually introduced sectarian elements into the newly emerged legal framework. Among the most pronounced manifestations of the sectarian shift mentioned is Ja'fari Personal Status law, because it has potential to fragment current legal system by encouraging a parallel legal identity in the system based on sectarianism. For instance, it may push the Sunni components of Iraq to demand their own personal status law, so as for other religious minorities, and creating prominent division in the current legal fabric of the country. Additionally, it has ability to undermine the principals of legal unity in the system, because it can introduce possibilities of multiple legal regimes coexisting within the same legal system, and this simply creates a complicated work environment in courts on the bases of sectarianism. It results different interpretations and applications of the laws within the same system.

The challenges the law can introduce are extended beyond the symbolic fragmentation of the legal system. Speaking of practical implementation of the law, Ja'fari Personal Status law can cause confusion in the judicial process. For instance, if a man or a women marry under Ja'fari Personal Status law and a crime like sexual and physical assault happens in the marriage, the women can file charges against the man according to Iraqi penal code (Law No. 11 of 1969), but since she married under Ja'fari Personal Status law she may lose chance of filing the case because article 101 of Ja'fari Personal Status law permits a man to enjoy the sexual relationship with his wife any time he wants and this may justify the crime. This easily creates inconsistency between what each legal direction

considers crime, and result in judicial uncertainty. Ultimately, this push Iraq's legal framework toward a pluralistic legal system and personal status system. It simply creates long term disarray in the judicial system which is difficult to solve.

No where is safe, not even IKR

One of the complex and compiling aspects of Ja'fari Personal Status law is the fact that there is not part of the country entirely safe from its impact including Kurdistan region of Iraq. According to Journalist Hussam Alhaj, who published a post on his account in X in 40 days of the implementation of the law, 800 mothers left middle and south of Iraq to IKR to keep the right of rising their children. When you look at the image, seeing the fact that IKR is autonomous federal region Article 121(1) of Iraq constitution, with its own legislative body and judicial system, you may see it as safe place, but the reality reversals the second side of the coin. In theory, this means the Ja'fari Personal Status law can be implemented in the region only if IKR's parliament approves it. However, current social, environmental and demographic dynamics show, there is a possibility that Ja'fari Personal Status law may inter IKR's legal framework in indirect means.

One of the potential channels that the law may enter IKR's legal frame work is through environmental migration or climate migration. According to latest assessments of International Organization for Migration (IOM) as of Dec 2024, 168,696 displaced in Iraq, most from the south and middle provinces of the country. However, IKR as part of Iraq is not safe from climate change, but with relatively more stable environment and its natural resources, there is a possibility of become a destination for this climate induced migrants. There is a great possibility that among this individuals and families there will be people who identify with or may seek to apply the Ja'fari Personal Status law. As the time passes and because of the social adaptation of this people, possibility of marriage tween Kurdish host community and displaced Shiia community members increase. Or there may be people who already married in Ja'fari Personal Status and want to file divorce in IKR! Moreover, there are displaced families, already holding legal documents of IKR, what if they request to register or amend their marriage to Ja'fari Personal Status? What if this became culture and lobbied and made to IKR's parliament? This may be a time-consuming process but not impossible.

In conclusion, Ja'fari Personal Status law have ability to put women's, societies and Iraq legal framework in jeopardy. By embedding sectarianism into civil law, civil life and finally threaten the unity and independence of Iraq's legal framework and judiciary. Moreover, its contradictions with 1959's personal status

law and gap of having a special penal code for it. It risks fragmenting Iraq legal frame work, and finally creating uncertainty in court.

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