

In The Name of God the Most Gracious, the Most Merciful

Republic of Iraq

The President of the Republic of Iraq

Pursuant to the Iraqi Constitution Articles No. (61/First) and No. (74/Third), legislated by Parliament, the President of the Republic of Iraq issues the following legislation:

Amended Law

Penal Code No. 111/1969

No. () of 2013

Article (1): Remove Paragraph (1) of Article (41) of the Penal Code No. 111/1969¹ and rearrange the paragraphs of this article as follows:²

Article (2): Convert Paragraph (2) of Article (128) of the Penal Code³ No. 111/1969 to Paragraph (3) and add Paragraph (2) to this article as follows:⁴ “Honor crimes are not considered an honorable motive for purposes of committing an offense.”⁵

¹ Article (41) of the Iraqi Penal Code No. 111/1969 states as follows: “There is no crime if the act is committed while exercising a legal right. The following are considered exercises of legal rights: (1) A husband punishing his wife and (2) parents and teachers disciplining children under their authority within certain limits prescribed by law or by custom.”

² All have agreed to the suggestion of removing any kind of right to discipline not only a wife, but also of a parent or teacher to discipline children. In the alternative, we suggest to remove the husband’s right to punish his wife, but maintain parents’ and teachers’ right to discipline children under their authority with the following language: Article (1): Remove Paragraph (1) Article (41) of the Iraqi Penal Code No. 111/1969 and replace it with: “1- Parents and teachers disciplining children under their authority within certain limits prescribed by law or by custom.”

³ Article (128) of the Iraqi Penal Code states: “Legal excuse either discharges a person from a penalty or reduces that penalty. Legal excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offense with honorable motives and the commission of an offense by a victim of an offense in response to an unjustified and serious provocation are considered a mitigating excuse.”

There is no objection to this article’s text. However, in its implementation, the Iraqi jurisdiction considers “honor killings” to be of “honorable motive,” which has led to the commission of serious crimes against women under the cover of “honor killings”. This article should not treat “honor killings” as an offense with honorable motives because this application contravenes the Islamic and human rights laws the Iraqi Constitution adopted.

Article (3): Amend Article No. (380) of the Iraqi Penal Code⁶ as follows: “Any husband who incites his wife or his kinship to commit adultery is punishable by detention and a fine no less than five million dinars but not to exceed one hundred million dinars.”⁷

Article (4): Amend Article No. (409) of the Iraqi Penal Code⁸ as follows: “Any husband who finds his wife in the act of adultery or sharing a bed with her lover and either (1) kills one or both of them, (2) attempts to kill one or both of them, or (3) assaults one or both of them such that he or she dies or is left permanently disabled, is punishable by:⁹

- 1- Imprisonment for a period no less than ten years, if he kills one or both of them;
- 2- Imprisonment for a period not exceeding seven years, if he (1) attempts to kill one or both of them or (2) assaults one or both of them, such that he or she dies; or
- 3- Imprisonment for a period no less than three years, if he assaults one or both of them such that one or both of them is left permanently disabled.”

⁴ The Kurdistan region adopted another solution mentioned in Article No. 14/2002, stating that “For the purposes of Articles No. (128, 130, and 131) of the Iraqi Penal Code No. 111/1969, the commission of an offense with honorable motives will not reduce the penalty as a legal excuse.”

⁵ We suggest to add a new paragraph to Article No. (128) of the Iraqi Penal Code as follows: “For the purposes of Articles No. (128, 130, and 131) of the Iraqi Penal Code No. 111/1969, the commission of an honor killing does not have honorable motives.”

⁶ Article No. (380) of the Iraqi Penal Code states, “Any husband who incites his wife to commit adultery, and she does so on the basis of such incitement, is punishable by detention.” This article fails to (i) punish the husband for inciting his wife to commit adultery when the wife does not actually commit the adulterous act; and (ii) mention the husband inciting his kinship to commit adultery.

⁷ Usually, when a husband incites his wife to commit adultery, he does so for economic reasons, i.e., to obtain money. Accordingly, the punishment should include not only detention, but also a fine.

⁸ Article No. (409) of the Iraqi Penal Code states, “Any person who finds his wife in the act of adultery or finds his kinship in bed with her lover and kills one or both immediately, or assaults one of them such that he or she dies, or is left permanently disabled, is punishable by a period of detention not to exceed three years. It is not permissible to exercise the right of legal defense against any person who uses this excuse nor do the rules of aggravating circumstance apply against any person who uses this excuse.”

⁹ Suggested amendments: (i) This article should apply exclusively to husbands and wives, i.e., kinship should be excluded from this article; (ii) with respect to reducing the penalty, husbands and wives should be treated equally where the same act is committed; (iii) the new amendment added “attempts to kill” to the acts listed in this article; and (iv) according to the new amendments, the severity of punishments should increase according to the severity of the criminal act and the harm resulting therefrom.

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Republic of Iraq

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Pursuant to the Iraqi Constitution Articles No. (61/First) and No. (74/Third), legislated by Parliament, the President of the Republic of Iraq issues the following legislation:

Amended Law

Personal Status Law No. 188/1959

No. () of 2013

Article (1): Remove Article No. (10) from the Personal Status Law No. 188/1959,¹⁰ and replace it with:

“Article (10):

1. The marriage contract must be registered in a special record in the office of an authorized marriage registrar and must be signed by the spouses, two witnesses, and the authorized marriage registrar. The spouses shall be provided with the original copy of the marriage contract.

¹⁰ Article (10) of the Personal Status Law No. 188 of 1959 states, “The marriage contract should be registered in a special record of the corresponding court, without paying any fees, and in accordance with the following conditions:

- 1- The applicants must submit a letter stating the identity of the two parties to the contract, their age, the amount of the dowry, and the absence of any legal impediment to the marriage. This document must be signed by the two contracting parties and certified either by the (Mukhtar) mayor of the district or village, or by two individuals revered by the district’s citizens.
- 2- The document must be supplemented by a medical report confirming the two spouses are free from communicable diseases and health impediments, in addition to other documents required by law.
- 3- The text of the documents must be written in the registrar’s office and signed, either through a written signature or a thumbprint, by the two parties to the contract in the presence of the judge who will certify the marriage thereafter and provide the spouses with the marriage evidence (Hujja).
- 4- The content of the documents is in full effect once they are duly registered. In addition, they are controlling in all matters concerning the dowry, as long as they are not subject to any objection before the corresponding courts.
- 5- Any man who executes his marriage contract outside the court is punishable by detention for a period no less than six months and not to exceed one year, or a fine no less than three hundred dinars and not to exceed one thousand dinars. If a man executes another marriage outside the court when he is already married, the man is punishable by imprisonment for no less than three years and not to exceed five years.”

2. The authorized marriage registrar's office shall not register the marriage contract until both spouses provide a medical report confirming both are free from communicable diseases and health impediments.
3. The authorized marriage registrar's office shall submit all registered contracts to the Ministry of Justice for archiving and authentication within seven days from the date of registration.
4. Upon request, the Ministry of Justice shall provide spouses, official entities, and whomever it may concern with a certified copy of the marriage contract. A marriage contract executed in an authorized marriage registrar's office shall be sufficient proof of the marriage in question, unless a final judgment was issued against its validation or for its forgery. However, the dowry shall remain applicable regardless of any adverse judgments as to the validation or forgery of the marriage contract.
5. The authorized marriage registrar shall not register a marriage contract if the law requires a special approval for the marriage. If special approval is necessary, a competent court, in accordance with the provisions of the law requiring said approval, must issue the approval. Only then can the authorized marriage registrar proceed with registering the marriage contract.
6. Any person who executes his marriage contract outside the authorized marriage registrar's office is punishable by detention of no less than three months and/or a fine no less than five million dinars, but not exceeding ten million dinars. If any person concludes his marriage outside the authorized marriage registrar's office and is already married, then he is punishable by detention for a period not to exceed six months and/or a fine no less than ten million dinars, but not exceeding twenty-five million dinars.
7. Any authorized marriage registrar who either executes a marriage contract knowing that it is invalid for any legal or religious reason or executes a marriage contract requiring a court approval before it is approved, is punishable by detention for a period no less than three months and/or a fine no less than ten million dinars, but not exceeding twenty-five million dinars.
8. The Ministry of Justice is authorized to issue licenses for a marriage registrar's office according to the terms, provisions, and rules regulated by the instructions issued by the Minister of Justice in coordination with the State Consultative Council and the concerned civil organizations. Licenses for marriage registrar's offices shall be provided only to Category "C" lawyers who have passed training courses and competitive exams as determined by the instructions issued by the Minister of Justice."¹¹

¹¹ We suggest this replacement for the following reasons:

- 1- There is corruption in the marriage contracts registration process in the courts.
- 2- The judges in the courts have numerous other responsibilities; negatively impacting the time judges can allot to the execution of marriage contracts. We should alleviate judges from such responsibilities and allow them to proceed with other types of cases.
- 3- Contract authentication is a duty for notaries rather than courts, while the main function of the latter is to settle disputes.

The concept of using an authorized marriage registrar is a step toward using private notaries rather than governmental notaries, who feel incompetent and unable to accomplish his/her duties within a reasonable period of time due to corruption and routine procedures. In addition, contract authentication a responsibility for notaries because authentication of a contract does not settle its disputes. Accordingly, the Ministry of Justice thinks it is

Article (2): Remove Paragraph (5) of Article 25 of this law,¹² and we suggest the following paragraph:

“Either spouse can request for separation from the other after obtaining a judgment of recalcitrance that is determinative, and the court must respond to the request. If the separation occurred before sexual intercourse, the wife shall return the received dowry and will lose her deferred dowry. However, if the separation occurred after sexual intercourse, the wife will return half of the received dowry and will lose her deferred dowry.”

Article (3): Remove Section (3) titled, “Voluntary Separation (Khula),”¹³ from Chapter (4) titled, “The Dissolution of Marriage,” of this law, and replace it as follows:

better to associate this issue with the Department of Notaries as opposed to linking it within the jurisdiction of the Supreme Judicial Council. Moreover, the suggested amendment does not change the current legal arrangement for marriage contracts; rather, it retains the same conditions and provisions for providing medical reports, obtaining permission for the marriage of minors, restrictions on polygamy, and other provisions. For the aforementioned reasons, we suggest the marital contracts be authenticated private sector notaries rather than by the courts.

¹² Article (25/5) of this law states, “(A) The wife has the right to request for separation two years from the date of obtaining a judgment of recalcitrance that is determinative, and the court must respond to this request. Pursuant to her request, the wife will lose her deferred dowry and, if she received her entire dowry, she will be obligated to return half of what she received. (B) The husband has the right to request for separation after obtaining a judgment of recalcitrance that is determinative, and the court must respond to this request. Pursuant to his request, the wife shall return what she received of her dowry, and she will lose her deferred dowry, if the separation happened before sexual intercourse. However, if the separation happened after sexual intercourse, she will not receive her deferred dowry and she shall return half of what she received from the entire dowry.”

The current law, according to Paragraph B in Article (25/5), distinguishes between the husband and wife in the timing of their request for separation after the issuance of the judgment of recalcitrance, thus allowing the husband to request separation immediately after obtaining a determinative judgment of recalcitrance (as mentioned in Paragraph B), yet forcing the wife (as mentioned in Paragraph A) to wait an additional two years by allowing her to request separation two years from the date of obtaining the judgment of recalcitrance that is of deterministic nature. In our suggested amendment, we aim to achieve equal treatment between both spouses in their request for separation immediately after obtaining a determinative judgment of recalcitrance.

¹³ Article (46) states: “1- (Khula) Voluntary Separation severs the bond of marriage through the wife’s pronouncement of the word (Khula) before a judge or an alternative word with the same meaning. Voluntary Separation is to be carried out before a judge through an offer and acceptance and is subject to the provisions of Article (39) of this law. 2- For the (Khula) to be valid, the husband must be qualified to divorce his wife and the latter must be worthy of it. The (Khula) is considered an irrevocable divorce. 3- The husband may divorce his wife through the process of (Khula) in exchange for monetary compensation, which may be more or less than her dowry.”

This article adopts the (Khula) type of voluntary separation, which requires the spouses to agree to separate voluntarily through a contract signed by both spouses resulting in a husband divorcing his wife by way of waiving some or all of her rights. In contrast, there is a second type of voluntary separation that has been adopted in many different jurisdictions such as Jordan and Egypt. This latter type of voluntary separation forces the husband to divorce his wife upon her request. According to Prophet Mohammed’s speech, when a woman does not like her husband, he may order her to return his garden, but must divorce her in the meantime.

Section (3)

Compulsory Separation (Khula)¹⁴

Article (46):

- 1- Compulsory separation severs the bond of marriage either through the consent of both spouses or through a judge order pursuant to the wife's request. In return for the severed bond of marriage, monetary compensation is agreed upon by both parties or is determined by the law. The (Khula) is an irrevocable divorce.
- 2- The spouses may separate consensually. In this case, the consensual separation is to be carried out before a judge through an offer and an acceptance by both spouses.
- 3- In the case of nonconsensual separation, the wife has the right to ask for separation by filing a lawsuit, however she must compensate her husband by waiving all financial and legal rights she gained from him, including her deferred dowry, the received dowry, and her alimony. The court must order her husband to divorce her, regardless of the husband's satisfaction.¹⁵

Article (4): Remove Paragraph (1) of Article (74) of this law¹⁶, and replace it with the following paragraph:

“Article (74): If a child, male or female, dies before his father or mother, he shall be treated as alive upon the subsequent death of his father or mother. His share of the legacy shall be handed

¹⁴ In accordance with the suggested amendment, the title of this section has been changed from Voluntary Separation (Khula) to Compulsory Separation (Khula) because the current title, Voluntary Separation, contravenes the substantive text of the suggested amendment. The suggested amendment forces the husband to divorce his wife upon her request and thus is not of voluntary nature and is instead compulsory. The same conflict occurred in the Kurdistan region when, as a part of their jurisprudence to diminish the effectiveness of compulsory separation laws, Kurdish legislators adopted the substantive rules of compulsory separation yet kept the title as (Khula) Voluntary Separation.

¹⁵ The drafting of this article is based on the best solutions found in our current Personal Status Law, the Kurdistan Personal Status Law Amendment No. 15 of 2008, and the Egyptian Personal Status Law No. 1 of 2000.

¹⁶ Article (74) of the Personal Status Law states, “1- If a child, male or female, dies before his father or mother, he shall be treated as alive upon the subsequent death of his father or mother. His share of the legacy shall be handed down to his own children, male or female, in accordance with *Shari'a* law (Islamic law). This shall be treated as a binding will, provided it does not exceed one third of the legacy. 2- The binding will, by virtue of Paragraph (1) of this Article, shall gain priority over other wills for purposes of the settlement of one-third of the will.”

The amended article has been added pursuant to the Third Amendment of the Personal Status Law No. (72) of 1979, which states the deceased child's share from the legacy will transfer to his own children only as binding will, excluding his mother and wife despite their shares in his legacy.

down to his mother¹⁷, his widow,¹⁸ and his children, males or females, according to *Shari'a* law (Islamic law). It shall be treated as a binding will, provided it does not exceed one-third of the legacy.”

Article (5): Add the following text to Article (74) of the Personal Status Law:

“The deceased child’s mother shall not collect both her shares of the legacy as the deceased’s mother and her shares from another binding will.”

Labor Law Amendment

The following texts shall be added to the Labor Law:

First Text- The following text shall be added to the “Purpose” or “Main Principles” section of the Labor Law: “The worker has a right to obtain work without being exposed to sexual harassment crimes. The employer shall provide effective measures to prevent these types of crimes.”

Second text-

“First: Any person who commits sexual harassment in the workplace is punishable by detention for a period not to exceed three years and no less than three months, and/or a fine of no less than five million dinars.

Second: Sexual Harassment is defined as any sexual conduct undesired by the receiving party¹⁹. It is committed to insult, disturb, as an indecent assault, to surround him or her with an aggressive work environment, to affect his or her effectiveness by letting him or her work under pressure, to motivate him or her to provide sexual services, or to resign from work by any way or means.

¹⁷ However, the deceased child’s mother may not receive her shares from the legacy if she was divorced before her child’s death.

¹⁸ We use the term “widow” in place of “wife” so as to not include the deceased son’s wife in the binding will if she marries after her husband’s death.

¹⁹ The phrase “undesired by the receiving party” is an element of sexual harassment present in all legal systems of the world. For conduct to be classified as sexual harassment it must be undesired by the receiving party; conversely, conduct is not classified as sexual harassment if the receiving party desires it for any reason. Without this sentence, the law will include far too many acts as crimes. For this reason, the amended text excludes conduct that occurs with the consent of both parties from sexual harassment, which is also in agreement with current Iraqi law, stating sexual conduct between consenting adults is not a crime.

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Pursuant to the Iraqi Constitution Articles No. (61/First) and No. (74/Third), legislated by Parliament, the President of the Republic of Iraq issues the following legislation:

Amended Law

Social Welfare Act No. 126 of 1980

No. () of 2013

Article (1): Amend Article No. (29) of the Social Welfare Act No. 126/1980 as follows:

“First: The main goals of state dwellings are (1) to provide welfare for children, kids, and juveniles who do not have a surviving father, and for women who cannot find a suitable and safe dwelling, (2) to provide the aforementioned individuals a healthy environment so as to compensate them from their loss of welfare and family companionship, and (3) to prevent the aforementioned individuals from feeling they live lower standards than others.²⁰

Second: State dwellings shall provide the children, kids, juveniles, and women who can't find a suitable and safe dwelling all necessities *per diem* and free of charge. These provisions shall include a dwelling, clothing, and food in accordance with instructions issued by the President of the Public Institution for Public Welfare.”

Article (2): Amend Article No. (31) of this law as follows:

“First: State dwellings shall receive males under the age of eighteen and females under the age of twenty-five.²¹

Second: The State shall not force adult males or females to enter or remain in the state dwellings mentioned in this law.”²²

²⁰ We suggest adding “Women who cannot find a suitable and safe dwelling” to Article No. (1), so as to accept women into state welfare after they reach the age of 18 and cannot find a suitable dwelling or have lost it for any reason.

²¹The current status: (The state dwellings receive any child under the age of 18 years and doesn't have survive father.)

Article (3): Amend Article No. (32) of this law as follows:

“There are four types of the state dwellings:

First: State dwellings for children under the age of five (5).

Second: State dwellings for kids between the ages of five (5) and thirteen (12).

Third: State dwellings for juveniles between the ages of thirteen (13) and nineteen (18).

However, juveniles may extend their residency in state dwellings for an additional year if he or she is a high school senior.

Forth: Women’s Centers for women who cannot find a safe and suitable dwelling. These state dwellings are meant to provide women with welfare, a dwelling, to rehabilitate them, help find them suitable jobs, and provide them with social, educational and entertainment services.”²³

²² We added this text in light of human rights so as to prohibit forcing any person, male or female, regardless of the reason, to enter or remain in a state dwelling, as long as the said individual does not commit a crime or any act against the law. Accordingly, the said individual can determine for himself whether he needs to stay in a state dwelling or not.

²³ The current article only mentions the first three types of state dwellings. Thus, we added the forth type, Women’s Centers, to mention the State’s new mission towards women who can’t find dwellings.