

Interview

Amendments to the Personal Status Law in Iraqi Kurdistan strengthen women's rights

Interview by Layla Al-Zubaidi

On October 30th, 2008, the Parliament of Iraqi Kurdistan passed a law amending many of the key articles of the Iraqi Personal Status Law. According to the Iraqi Constitution, Kurdistan, as an autonomous region of Iraq, has the right to amend national laws. These amendments are in force only inside the Region.

Iraq, in contrast to many Arab countries, has one unified Personal Status Law which is considered one of the most progressive in the Arab region with regards to women's rights (for more information on this please see our article on Iraqi Personal Status Law). However, the Kurdish amendments to the law further extend women's rights in marriage, divorce and inheritance, by for example placing more restrictions on polygamy, and giving more rights to women in divorce.



On July 8, 2009, Layla Al-Zubaidi of the Heinrich Böll Foundation's Middle East Office in Beirut interviewed Kurdish Judge Mohammad Amin Al-Shirfani and Kurdish MP Karim Bahri Bradoust on the new Personal Status Law and the implications of the new amendments on women's rights in Kurdistan.

Q: I would like to ask you about the personal status law in Kurdistan. The Kurdish Parliament passed amendments that have improved women's rights, and the reaction from women's rights organizations was very positive. I'd like to know more about this initiative, how it started and how the new regulations will be implemented practically?

Al-Shirfani: Regarding the timing of the initiative, Mr. Bradoust is more informed about this than I am. Regarding the implementation, I would like to reply to this.

Bradoust: Yes we'd like to split the answer into two parts. Before I talk about the draft law, I will give you a bit of information on the Parliament in Kurdistan. It is made up of 111 MPs, and its proceedings are defined by internal regulations. Draft laws can be submitted to Parliament by two methods. The first method is to have 10 MPs sign a draft law and submit it to the Speaker of Parliament, who then places it on the Parliamentary agenda for a first reading. It is then transferred to Parliamentary committees for further study. The second method is through the government which submits a draft law by sending an official letter to the Speaker who then adds it to the agenda for a first reading. Subsequently, it is also sent to the relevant Parliamentary committees for review.

Q: Does civil society have a role in Parliamentary committees?

Bradoust: Civil society does not have representation in the committees, but it is possible for civil society organizations, according to their expertise, to attend meetings (for example of the women's rights organization or the legal committee) to present their expectations of a draft law.

Of course I will talk about the role of civil society in developing the personal status draft law. The personal status draft law originated from continuous demands voiced by women's groups to Parliament, requesting the amendment of the laws concerning polygamy. They also asked that the word *noshouz* or obedience (of a woman

towards a man) be removed, and they asked for women to have the right to irrevocable divorce, as well as other issues.

As a member of the law committee and women's rights committee, we collected these demands and included CSO representatives in our meetings. We also consulted many scholars, theologians, professors and invited them to workshops and meetings in Parliament. Consequently we developed a comprehensive plan for the draft law. We listened to many civil society representatives and experts.

The women's rights committee wrote the draft text, collected the legally required signatures from MPs and submitted the draft law to the Speaker of Parliament.

Because the topic was sensitive, I felt that it was better if it were studied further and that the government and cabinet were familiar with the draft law because ultimately government has the executive power to implement this law.

The Speaker sent the draft law to the cabinet, which decided to launch a special committee to study it. The committee was comprised of law professors, experts in Islamic Shari'a laws and personal status law, religious leaders as well as women's rights activists. They studied the draft law, added some items and deleted others, based on the social situation in Kurdistan. Furthermore, the Prime Minister held a conference on the draft law and a big number of religious leaders of all governorates of Kurdistan attended, in addition to almost all Kurdish women's organizations, activists and human rights organizations. I participated in this conference as well.

During the conference, other ideas were developed and added to the draft law. Recommendations were made specifically for the special government committee and the draft law became a government draft law which was sent back to the Speaker of Parliament. We spent almost two and a half years drafting and developing this law, and Parliament debated it article by article.

The Kurdish Parliament had never witnessed an intense and lively debate as the one on this draft law. The subject is very sensitive. On the one hand, women's groups put pressure on Parliament to ratify all the amendments, while on the other hand some religious leaders from their pulpits and mosques attacked Parliament for interfering in issues which are the domain of Shari'a laws and thus at the heart of religion.

Parliament was therefore in a very difficult situation. For example on the issue of polygamy there were two points of view: one which advocated banning it completely and the other which agreed to allow it but with very tough conditions imposed. The former text of the law says that polygamy is allowed except in certain cases. But in the new text this was amended to state that polygamy is not allowed except in certain cases.

Q: What were the most important amendments?

Bradoust: One of the most important amendments was the definition of marriage, which previously only focused on giving birth, even though marriage has a much wider definition than bearing children.¹ Also issues such as polygamy and *noshouz* (or obedience). Previously *noshouz* applied only to the wife, but based on Quranic text we explained that it is applicable to both husband and wife.

On the question of *khul'* or voluntary separation some progress was achieved. *khul'* in the past could not happen without the consent of both partners; in other words, a woman could not separate from her husband without his consent. We amended this based on Hanafi Legislation² which considers that if the wife gives up her right to a dowry she can be divorced from her husband

¹ According to the Kurdish amendment to Article 3 of the Personal Status Law, marriage is "is a voluntary contract between a man and a woman according to which their marriage life will become lawful as per Islamic laws. The aim of marriage is to form a family on the basis of love, sympathy and mutual responsibility according to the provisions of this Act."

² The **Hanafi** school is one of the four schools of jurisprudence in Sunni Islam named after its founder, Abu Hanifa an-Nu'man ibn Thābit. It has a reputation for being more liberal than the other three schools.

without his consent. This is a new development. If a husband is absent, we also gave women guardianship over their children. Women do not have this right in the rest of Iraq, nor the rest of the Arab world. We think that the Kurdistan model advocates for women's rights and reduces the injustice practiced upon women in part of Iraq. As a legislative progress it serves the future of Iraq as a whole.

Q: Does this development in the personal status law in Kurdistan have some effect on the Iraqi Parliament as well? Do they consider that this experience is a good model which they want to emulate?

Bradoust: The obstacle is Article 41 of the Constitution which gives the right to each sect to manage its own personal status laws according to the respective confessions. If only they had not tried to amend the unified personal status law.

Noshouz (Disobedience)

Noshouz according to Article 25 of the Iraqi Personal Status Law applies only to the wife. The Kurdish amendment applies *noshouz* to both husband and wife as follows:

1. When a spouse leaves the home without permission and in an illegal manner (leaves or abandons the home? And when would anyone who abandons a home ask for permission, it defeats the meaning of the word? And what be a legal way of doing it?
2. Failing to carry out marital duties adequately or carrying them out with the purpose to harm the spouse (adequately by the standards of who or what? Is there reference? And which ones would be the marital duties that if carried out "adequately" would cause harm – do duties to harm exist?
3. A husband failing to provide a home for his wife that is socially and economically appropriate.

The amendment also obliges courts to investigate properly before issuing a verdict on a spouse accused of *noshouz*.

Q: In Kurdistan, you are bound by Iraqi Law.

Bradoust: We cannot abolish laws of the central government but it is our right not to apply them and to use other legal texts.

Al-Shirfani: Kurdistan has the right to have a personal status law for itself if it deems that the conditions are favourable; constitutionally there is no obstacle. The different Iraqi governorates, including Kurdistan, can have laws specific to them according to their particular needs.

Q: Is this what you prefer?

Al-Shirfani: We prefer to have a unified law which is not based on sectarianism or religion; a unified law like the current law only more developed. But when each sect follows and implements its own specific laws, this creates a lot of confusion, a situation which we do not want to have. If Iraq moves towards more religious laws, then in the Kurdistan region we will have a law which is specific to us. Such a law would be a unified law applicable to all citizens of the Kurdistan region and it would not be a religious or sectarian law, because the majority of the people in Kurdistan do prefer a unified law. An exception to this view maybe expressed by other sects such as Christians and Yazidis, who prefer to follow their own laws.

But Muslims of all sects prefer a unified personal status law. I want to add to what MP Bradoust said about judicial implementation.

In reality this law was new to the judiciary because we did not participate effectively in the drafting process and were not consulted during the discussion on the draft law in Parliament. Thus the text was new to us. It would have been good had it been developed in a better way.

Bradoust: I would like to intervene; personal status judges from Erbil took part in the conference and in several meetings in Parliament.

Al-Shirfani: The invitation to participate came during the last stages of the drafting process. Implementation was a bit difficult at first but we got used to it, and there were no negative social side-effects or complaints. Citizens began to regain confidence in the judiciary because there is a law in place and rulings were being delivered by courts.

Q: I wanted to ask you about feedback from the people?

Al-Shirfani: There were those who opposed the law, and those who supported it. But there was no opposition to the law once it came into effect. There were individual reactions and some tried to contest the law constitutionally but they later

withdrew their complaints.

Bradoust: I want to add to what Judge Al-Shirfani said. The reaction in the beginning was intense. The street blazed with arguments between the women's movements and many conservative clerics. But finally, the will of the women's movements prevailed and Parliament was the defender of women's rights.

Al-Shirfani: A month ago we organized a conference in cooperation with the Violence Against Women Directorate in the Governorate of Duhok. There was a lot of debate. The personal status law was also discussed in the presence of some clerics and even some judges who opposed it.

For example, everyone knew that the law prevents marriage to more than one wife. But some said that it was possible to marry a second wife despite the strict conditions. Moreover, previously, when a judge wanted to check whether a man was financially able to marry a second wife, the judge would listen to two witnesses and would make his decision based on their testimony alone without consulting official documents as to the man's financial assets. But now the situation is different because the man petitioning to marry a second wife has to prove with official documents his financial and material ability to support two wives equally. He also has to obtain the consent of his first wife. Previously he was obliged only to inform his first wife, and there was no need to obtain her consent. The judge would then give him permission to marry a second wife.

We hope that Iraq will further develop and improve its personal status law and thus take away some of the burden put on Kurdistan which would encourage us to proceed in developing some of the articles in our own personal status law, and introduce some new ones.

: Do you think that this first step will lead to further steps in developing the personal status law?

Al-Shirfani: We consider this to be a first phase.

Polygamy

The new Kurdish Personal Status Law puts further restrictions on polygamy, or a man's ability to marry more than one woman at the same time (Article 3). A man must petition a judge to acquire a second wife, and must fulfill the following conditions:

1. The first wife's consent in court
2. There is no condition in the marriage contract set by the man's first wife that he cannot take a second wife.
3. If the wife is afflicted with a medically proven chronic incurable disease that prevents having sexual intercourse, or if the wife is infertile.
4. The man has to provide official documents proving his financial ability to support more than one wife.
5. The husband has to submit a written document to the court, in which he has to vow to deal with both his wives fairly and equally in terms of sexual intercourse and other marriage relations both materially and morally.

We hope for more progress in the development of the personal status law especially since some of the articles still contain some shortcomings.

Q: Is it possible to amend certain articles?

Al-Shirfani: After the law was passed, we felt that there were some articles which should have been amended further. For example, the legal age of marriage, which was previously 15 years, was amended to 16 years. But the second part of the article retained the old text [Al-Shirfani is here criticizing Article 8 part 2 of the amended Personal Status Law which allows a judge to "authorize the marriage of a 15-year-old person, if he sees in it an urgent necessity. Giving such authorization is also conditional upon the attainment of legal puberty and physical authority."]

Bradoust: I can explain why the second part of the article was not amended. If a boy rapes a girl, the issue is usually dealt with by marrying the girl to her rapist if she is underage. Or for example, elopement, when a boy elopes with a girl without her parent's approval. Here we gave the judge the opportunity to pass judgment in these cases according to his estimation [In many incidents of consensual kidnapping, family feuds usually break out. And despite the fact that the couple is married, they are often pursued by family members with the intention of killing them. The Kurdish law puts these cases under the jurisdiction of the court].

Q: What about changes to the Penal Code regarding women?

Al-Shirfani: There is legislation that attempts to limit violence in our society. Of course there is heavy violence and moderate violence. For example, when a husband beats his wife with the alleged intention to discipline her, there was no law to punish him for this. Consequently, he was permitted to beat his wife. But now we have put a stop to this.

There are other articles that we have stopped applying. For example, a section was added to article 408 [of the Iraqi Penal Code] concerning cases of suicide. Following new amendments whoever assists, instigates or commits actions leading to a suicide is penalized by the law.

Assistance and instigation are general components of the Penal Code, but the crime of causing a person to commit suicide was a new section added to the Penal Code in Kurdistan. This additional section led to the summoning of many people before courts because they were accused of causing their wives, daughters or sisters to commit suicide. There are many suicide cases in Kurdistan.³

Amendments were also made to articles dealing with adultery in the Penal Code. Adultery was penalized only if it was committed by the wife and not by the husband. But if we believe in the principle of equality in family life and mutual respect, why should the wife be penalized for adultery and not the husband? So we added another section to the Penal Code which also penalizes husbands for this crime.

There are other articles in the Penal Code which were amended. For example, if a woman has been assaulted by her husband, courts are now prohibited from suspending a sentence on the husband [in the past, if a husband assaulted or raped his wife, courts usually tried to reconcile spouses. Under the new amendments the courts

³ Kurdistan has a high rate of suicide by women for various social reasons. For more information on this, please visit:

<http://www.krg.org/articles/detail.asp?smap=02010200&lngnr=12&asnr=&anr=17314&rn=73>

are obliged to investigate before passing their ruling]. Courts are prevented from resorting to rulings which consider the killing of women as an act of defense of a man's or a family's honor, and thus passing lenient sentences. It is no longer considered a mitigating excuse for killing a woman.

Bradoust: the issue of women's rights in Kurdistan was reflected in all laws. Wherever we discovered injustice towards women, we eliminated it. And wherever we found articles that preserved women's rights, we strengthened them. For example, regarding service in the Peshmerga [the defense force of Kurdistan according to the Iraqi constitution], the law discriminated against women. So we gave full rights to women in terms of salaries, promotion, and benefits. We achieved this for Kurdistan, and we hope that Kurdistan's efforts influence Northern Iraq and the rest of the country.

Q: What other legal amendments were made regarding women?

Bradoust: In the past, many amendments were passed in the Kurdistan Parliament, which were not up to the standard to which aspired. This law has fulfilled many of our ambitions. But we also aspire to other changes that cover all aspects of life.

Al-Shirfani: Changes were made to the alimony stipulations (covered in the Personal Status Law). According to Shari'a Law, the total amount of alimony is usually paid right after the divorce. However, if the husband is unable or refuses to pay his ex-wife alimony, the judge forces him to pay it in installments. In the Iraqi Penal Code, alimony installments have to be paid in no more than two years. Whereas in Kurdistan, alimony installments have to be paid in no less than two years; for higher amounts, in no more than five years [Under Shari'a Law, the amount of the alimony is determined before marriage, and stated in the marriage contract. This amount is separate to the child allowance which a husband pays his ex-wife following divorce].

Q: As men, why are you concerned with

women's issues?

Al-Shirfani: In the course of my work as a judge, I've experienced and sympathized with women's plight in a concrete and down-to-earth context, and not just theoretically. Others experience women's issues from their families or relatives only. But as judges, we deal with women's issues through cases which include all social classes. Everyone relies on the courts to solve their problems, whether they are personal cases or criminal cases. And we see the extent of injustice that women face.

For example I have seen many cases of suicide by women, most of which are results of problems within the family or tribe. I have seen women who were hurt and assaulted. This is actual experience, and not what is said in newspapers or gossip. We also witnessed women advocate to improve their situation and achieve equality. When we talk about equality we mean lifting injustice off women so they can live their lives in a better way and not in an unequal way.

Bradoust: For me there are three factors: first of all myself; secondly, my job; and thirdly, my tribal affiliation. In our tribe, women play an important role and their opinion is respected. Women work alongside men in all fields of life and they play an important role in meetings. Professionally, I'm a lawyer and I've worked for 25 years in many Iraqi governorates including Baghdad, Mosul, Kirkuk, Al-Anbar, Erbil, Suleimaniyeh, and Duhok. During this time I witnessed the injustice women face, which is the result of our social situation and the unjust laws towards women in all governorates, including Kurdistan.

I felt the injustice towards women and I defended women's rights in all areas even in the trade union movement, the Kurdistan Legal Union and the Kurdistan Lawyers' Syndicate. I always advocated for women's issues, defending them, felt solidarity with them, and participated in women's movements.

There is also the personal factor. My father died when I was in middle school, so my mother, may God rest her soul, is an example and role model for me. She brought us up and encouraged us to study, and she helped form my personality. I

never saw anything lacking in my mother. She had a strong personality and an important role in my tribe, and thus I believe that women should be leaders just as men are. That's why I fight for women