

In the name of God, the most gracious the most merciful

In the name of the people,

The Sovereignty Council,

On the strength of the provision 1 came under Article 56 of the amended Act 1, passed in 1992, and at the request of the Iraq Kurdistan Region Council of Ministers, the Iraqi Kurdistan National Assembly, in its 16th session held on 13 Nov. 08 passed the following Act:

Act No. 15 of 2008

**The Act to Amend the Amended Law (188) of the year 1959;
Personal Status Law, in Iraq Kurdistan Region**

Article 1:

Firstly: The validity of Paragraph 1, Article 3 of the amended law No. 188 of the year 1959 shall be suspended in the Iraqi Kurdistan Region and replaced with the following:

1. Marriage is a voluntary contract between a man and a woman according to which their marriage life will become licit 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.

Secondly: The validity of Paragraphs; 4, 5, 6 and 7 of the Article 3 of the amended law No. 188 of the year 1959 shall be suspended and replaced with the following:

- Marrying more than a woman is not allowed unless authorized by the judge.

The authorization depends on meeting the following conditions:

- a. The first wife has to agree before the court on her husband's marrying a second wife.
- b. If the wife is afflicted with a [medically]-proved chronic incurable disease that prevents having sexual intercourse, or if the wife is infertile. These have to be certified by specialized medical committee's report.
- c. The man who wants to get married to a second wife, has to have enough financial ability to spend on more than a wife and he has to provide certified formal documentation for this and submit it to the court as he carries out the marriage contract procedures.
- d. The husband has to submit a written document to the court before [signing -T-] the marriage contract, 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.

- e. The wife must have not set as a condition in the marriage contract that her husband must not have a second wife.
- f. Anyone who marry a second wife contrary to what has been stated in paragraphs; 'a', 'b', 'c', 'd' and 'e' of the second item of this Article, will be sentenced to imprisonment for a period of time that ranges between the minimum of six months and one year and fined ID10m.
- g. The judge must not suspend the penalties stated in paragraph 'f' above.

Article2: The validity of Article 5 of the law shall be suspended and replaced with the following:

A marriage contract is valid if the two parties to the contract, or whoever acting in their places, meet the conditions required as per provisions of this law.

Article 3:

Firstly: The validity of Item 'd', Paragraph 1 of Article 6 shall be suspended and replaced with the following:

1.

d. Testimony of two witnesses having the qualification of legal competence, who have to bear witness for the marriage contract, in this paragraph men and women are equal.

Secondly: A 5th paragraph shall be added to the Article in the following manner:

5. During the marriage contract, the wife can set as a condition to be able to divorce her husband.

Article 4: The validity of paragraph 2 of Article 7 shall be suspended and replaced with the following:

- 2. The judge has the authority to allow a spouse to get married if s/he has a mental illness if special medical committee's report showed that his/her marriage will not harm the community and it will be in his/her interest provided that the spouse clearly expresses his/her agreement in writing during the marriage contract.

Article 5:

Firstly: The validity of paragraph 1 of Article 8 shall be suspended and replaced with the following:

If a 16-year-old person asks to be married, the judge can authorize his marriage if the eligibility and physical ability of the person in question was proven to him, after obtaining the approval of his legal guardian. If the guardian abstains from responding, the judge calls upon him to state

his agree during a defined period. Thus, if the guardian does not object or if he submits an objection that is unworthy of consideration, the judge shall allow the marriage.

Secondly: a third paragraph shall be added to the Article in the following manner:

3. A mother shall be considered as a legal guardian if the father is dead, or he is missing and the mother brought her up and live with her.

Article 6: The validity of paragraphs 1 and 2 of Article 9 of the law shall be suspended and replaced with the following:

1- No relative or non-relative has the right to force marriage on any person, whether male or female, without their consent. The contract of a forced marriage is considered void if the marriage is not yet consummated. Even if the marriage is consummated, the contract shall be suspended. Moreover, none of the relatives or other people has the right to prevent whoever is eligible for marriage from being married by virtue of the provisions of this marriage law.

2- A first degree relative who breaches the provisions of paragraph 1 of this article shall be sentenced to two to five years [minimum of two years and maximum of five years]. If the person who breaches this provision is not a first degree relative, he shall be sentenced to an imprisonment term varying from a minimum of three years to a maximum of ten years.

Article 7: The validity of paragraphs 2 and 5 of Article 10 of the law shall be suspended and replaced with the following:

2. The document must be supplemented by a medical report confirming that the two spouses in question are free from Acquired Immune Deficiency Syndrome [AIDS] and health impediments, in addition to other documents required by law.
5. Any man who concludes his marriage contract outside the court is punished with a fine varying between ID1m to IDm3. If he concludes another marriage outside the court when he is already married, the imprisonment penalty shall range between a minimum of three years and a maximum of five years.

Article 8: The validity of Article 23 of the law shall be suspended and replaced with the following:

The wife is entitled to alimony from the husband, but if the wife is financially capable, the wife's alimony shall be shared between them provided that the wife agrees on this.

Article 9: The validity of paragraphs 1 of Article 24 of the law shall be suspended and replaced with the following:

1. The alimony of a wife who did not breach any marital obligations stated in this law shall be considered a debt that her husband has to pay since the time he stops paying it.

Article 10: The validity of provisions of Article 25 of the law shall be suspended and replaced with the following:

Firstly: Disobedience is a case where a spouse condescends to his/her spouse like the following cases:

1. When a husband leaves his wife, or a wife leaves the husband's home without permission and in an illegal [unlawful or illicit -T-] manner.
2. Carrying out marital duties badly by either of them or carrying them out with shortcomings with the purpose of harming the spouse.
3. Husband's failure to provide the legal home for the wife that is socially and economically appropriate.
4. Preventing the husband or the wife from entering the home without a legitimate reason.

Secondly: The court has to take its time before issuing a verdict indicting a spouse with disobedience, until it is completely informed of the reasons behind the disobedience and it has to make all efforts to put an end to the reasons that causes the disobedience.

Thirdly: Disobedience shall be considered a reason of divorce six months after the court's final ruling of disobedience in the following manner:

1. If the husband is disobedient, he has to pay his wife's alimony throughout the time of his disobedience. And in the case of separation, he has to pay the post-dowry and waiting period alimony, and payable compensations if required.
2. If the wife is disobedient, she has no right to alimony and her post-dowry shall drop in case of separation after their marriage is consummated. If she has received the entire dowry, she has to pay back half of it. If they separated before the marriage is consummated, the post dowry shall drop and she shall be obliged to pay back what she received from her pre-dowry.

Fourthly: Separation according to the provisions of this law is considered a minor irrevocable divorce [as opposed to major irrevocable divorce -T-].

Article 11: The validity of Articles 29 and 30 of the law shall be suspended and replaced with the following:

(If a husband leaves his wife, disappears, or if he is missing or jailed, leaving his wife without alimony, the judge shall rule for payment of alimony for her from the date when he is absent, the social care fund shall pay her an estimated alimony.)

Article 12: The validity of Article 33 of the law shall be suspended and replaced with the following:

(Neither the wife nor the husband shall obey one another in any matter that conflicts with the rulings of the Shari'a [Islamic laws -T-].

Article 13: The validity of Article 34 of the law shall be suspended and replaced with the following:

Firstly: Divorce means to sever the bond of marriage in an express utterance indicating the divorce legally, without restriction to a specific form or certain language, by the husband or the wife, any authorized representative or the judge.

Secondly: A proxy is not accepted in the procedures of social investigation, arbitration and divorce, unless there is something that prevents one of the two spouses from attendance.

Thirdly: The divorce does not occur without two honest witnesses during the act of divorcing, or admitting it before both of them or before the judge.

Article 14: The validity of Article 35 of the law shall be suspended and replaced with the following:

1. The divorce shall not occur, if the person in question is drunk, insane, mentally deranged or compelled, and any person who has lost the capacity to make a sound judgment due to anger, a sudden disaster, age or illness.
2. Any person who has a fatal illness, or who is in a state that most likes of it have led to death. If the husband dies because of that illness or state, his wife inherits his legacy, unless he lost the capacity of making sound judgments, even if the divorce is of the irrevocable kind.

Article 15: The validity of paragraph 2 of Article 37 of the law shall be suspended and replaced with the following:

No verbal or gestural divorce repudiations will count as divorce, even if counts as divorce, it will count as one divorce and the divorce of a wife during the waiting period cannot occur.

Article 16: The validity of paragraph 1 of Article 38 of the law shall be suspended and replaced with the following:

Divorce is divided into two kinds:

1- The revocable divorce which allows the husband to return to his wife during her waiting period (*iddat*) without a contract provided both of them desire reconciliation.

Article 17:

Firstly: The validity of paragraphs 2 and 3 of Article 39 of the law shall be suspended and replaced with the following:

- (2) The husband shall be obliged to put a sum of money in a special family care fund with the court when he files a [legal -T-] suit for divorce.
- (3) If the husband divorces his wife and the court finds out that the husband is arbitrary in divorcing her and the wife is harmed because of it, the court shall rule based on the [legal] suit that the wife files that her husband has to pay a compensation that is proportionate to [commensurate with -T-] her financial status and the extent of his arbitrariness and severity. It shall be estimated to be an entire sum that has not be less than her alimony for a minimum of 3 years and a maximum of 5 years, in addition to her other fixed rights.

Secondly: A paragraph numbered 4 shall be added to the Article in the following manner:

- (4) The [Kurdistan] Regional Government shall be committed to taking care of divorces woman who has no monthly income and it allocates a monthly income for her until she finds a job or remarries.

Article 18: The validity of paragraphs 5 Article 40 of the law shall be suspended and replaced with the following:

- (5) If a husband marries a second wife, his first wife shall have the right to asking for separation.

Article 19:

Firstly: The validity of paragraphs 1 and 2 of Item 1 of Article 43 of the law shall be suspended and replaced with the following:

1. If the husband is facing an incarceration for a period of three years or more, after serving one year of the term, even if he can still provide for her needs.
2. If the husband has abandoned his wife for one year or more without a legitimate reason, even if his whereabouts are known and has such an income that she can spend from it.

Secondly: The validity of paragraph 3 of Article 43 of the law shall be suspended in the Kurdistan Region.

Article 20: The validity of Article 44 of the law shall be suspended and replaced with the following:

Establishing the reasons of separation may happen by all means of evidence – except for the cases for which the law has specified certain means of evidence – including reported audible [sound -T-] testimonies. It is up to the court to decide on the testimonies.

Article 21: The validity of paragraphs 1 and 3 of Article 46 of the law shall be suspended and replaced with the following:

1. *Khul'* is to sever the bond of marriage by pronouncing the formula of *khul'* or words of the same meaning, in return for a compensation no more than from the pre-dowry that she received. In the case of *Khul'*, the husband should not necessarily agree with *Khul'* [for the divorce to take place -T-], if the judge found out, through his arbitration, that the wife cannot stand living with him.

Article 22: The validity of Article 50 of the law shall be suspended and replaced with the following:

The live husband has to pay waiting period alimony to the divorced wife. Death waiting period alimony shall not be paid.

Article 23: The validity of Article 58 of the law shall be suspended and replaced with the following:

Each person shall be provided with maintenance from his own money, except for the wife who shall be provided with maintenance by the husband since the time of legal [marriage -T-] contract.

Article 24: The validity of Article 74 of the law shall be suspended and replaced with the following:

1. If the child, male or female, dies before his father or mother, he shall be considered as alive upon the death of any of them. His share of the legacy shall be handed down to his own children, males or females, according to Shari'a laws. It shall be regarded as a binding will provided that it won't exceed one third of the legacy.
2. The provisions of the binding will apply to grandchildren, male or female, as well as to the spouses if the wife is a Muslim.
3. The testator can distribute his/her legacy while he is alive to their inheritors, male or female, equally and he can will it to them provided that it won't exceed one-third of the legacy, and authorized by the rest of them, if it exceeded one-third.
4. The testator can will their legacy provided that it won't exceed one-third of the legacy.
5. In case of duplication of binding will with voluntary will, the former shall gain priority over the latter.

Article 25: The validity of paragraph 1 of Article 91 of the law shall be suspended and replaced with the following:

1. The husband is entitled to a quarter of the legacy when there is an inheriting descendent to his wife; and to half when the latter does not exist. As for the wife, she is entitled to one-eighth of the legacy when there is an inheriting descendant, and to a quarter when the latter does not exist, after receiving her share of the legacy that she contributed to making it.

Article 26:

All legislative texts that contradict to the provisions of this Act shall be annulled.

Article 27:

Council of Ministers and relevant parties have to execute the provisions of this Act.

Article 28:

This Act will take effect as of the date it is published in Kurdistan official Gazette.

Adnan Mufti

Iraqi Kurdistan National Assembly Speaker

Reasons for Passing this Act

As the Personal Status Law is important, directly related to the individuals, family and society, in order to develop the Kurdish society, regulate the prevailing family and social relations in it, realize justice and equality in family and social dealings, bring about adaptation and harmony between the law and contemporary civil developments, echo civil society organizations' aspirations to establish and secure the rights of Kurdistan women and to realize active justice between men and women, the two wings of the human life in the community, [for all of these reasons -T-] this law has been enacted.

Note:

This law has been published in issue 95 of the Kurdistan Gazette.

[endall]