

This article was translated from an original piece written by Safia Al Souhail, Member of Parliament in Iraq's Council of Representatives. This piece was written when the proposed bill was in the drafting stage; the draft law has since been approved by the Iraqi cabinet (<http://www.reuters.com/article/2014/03/08/us-iraq-women-islam-idUSBREA270NR20140308>).

Iraqis' New Personal Status Ja'fari Law is Sectarian

Translation by Yomna Sarhan

Many Iraqis expressed outrage and protested against the Ja'fari bill on jurisprudence and personal status. This bill is now in the Iraqi parliament awaiting discussion and voting. Many Iraqis argue that the Ja'fari bill feeds sectarianism because it differentiates between different sects, and each sect will be judged in a different manner. This bill also includes violations of women's and children's rights.

The Ja'fari bill's proposal to decrease the legal marrying age concerns many Iraqis. The legal age will be lowered from 18 to 9 for females and 18 to 15 for males. This bill is also seen by many as a catalyst for corruption—as some have asked the Iraqi Minister of Justice if he would marry off his daughter when she is only 9 years old.

The scholar Nassir Ghadir argues that the Ja'fari bill incites discrimination and separation between sects and that the bill will cause damage to the Ja'fari school of jurisprudence. He added that he is an expert in Shiite jurisprudence and, from his perspective, the first people that should be opposed to this bill are those well-versed in Shiite doctrine. Not only does the bill violate the rights of women and children, he added, but also human rights in general—specifically parts 2B, 14, 19, 37, 41, and 42. Do not let the name “Ja'fari Shiite” bill fool you.

The writer Salwa Zako asserted that the Ja'fari bill will cause disunity in Iraqi society. She urges civil society groups to take a real stand against it because it is a dangerous effort to divide Iraqis and destroy women's rights that were established under the personal status laws of 1959. She asserts that Iraq is quickly nearing dissolution of its national unity.

Novelist Latifa Eldelimy described the Ja'fari bill as the beginning of the division of Iraqi society. This bill, she argues, will take Iraq back to the era of slavery. She asks, where are the Iraqi women who participate in social activism? Who will protect our freedom and justice? According to Eldelimy, the current Iraqi government is miserable, the parliament is backward, and the coming generations of Iraqis will hold you accountable for what you are committing. Iraqi intellectuals must now choose between two paths: sectarianism or secularism. Eldelimy challenges them—now is an important test—if this law passes, then they will deserve what happens to them. And this is the beginning of Iraq's sectarian division.

Journalist Qahtan Jasem believes that the Iraqi cabinet's decision to pass this bill and send it to parliament for voting is a public confirmation of Iraq's sectarianism. The Iraqi government, he asserted, implements its programs with influence from Islamic parties. This is a very dangerous decision, Jasem added, and it will aggravate the rift between Iraqis. This is a dark day in the lives of Iraqi women and the lives of every Iraqi who dreamed of creating a civil state, he concludes.

The writer Farhan Abo Fady asserted that this bill will create a state of fragmentation and raise many questions that need to be answered, such as: who will appoint the judges in the Ja'fari court? Are they considered religious authorities? If they differ on a religious matter, who will moderate or make the final decision? What happens if one person involved in a case wants to go to an Iraqi civil court, but the other wants to be judged by a Ja'fari court?

The poet Balkis Hamid Hassan emphasized the danger of this bill and how it is unsuitable for modern times. Enforcing these old laws, she asserted, will cause injustice, and women are the first victims. This backward law, Balkis added, wants us to return to the tribal-era in a time of space exploration, communication technology, and electronics. She also stressed the social dangers of the Ja'fari law, as it will cause Iraqi society to crumble. Therefore, Hassan said, it is the obligation of every citizen to stand against this law to prevent Iraq from becoming more ruined and weakened than it already is.

The lawyer Tamim Elezawy calls for government officials, legal experts, academics, civil society members, and human rights activists to all come together and take steps to agree on a comprehensive civil law that ensures women's rights and protections against the multiplicity of laws that jeopardize their rights, especially after the unstable social circumstances post-2003. Elezawy added that after 2003, many women and family-related problems were aggravated, such as early marriage, increasing divorce rates, and marriage outside of the courts (illegal marriage).

The following are some comparisons between the Ja'fari law and the 1959 Personal Status (188) law in Iraq:

- Age at marriage
 - Article 16 in the Ja'fari law: legal age is 9 for girls and 15 for boys
 - 1959 law: marriage is not allowed for those less than 18 years old, but the judge may allow marriage at 15 in extenuating circumstances.
- Marriage
 - Ja'fari law: marriage is between two Muslims; a Muslim man is not allowed to marry a non-Muslim, except for temporary purposes.
 - 1959 law: a Muslim man is allowed to marry a woman "of the book," but a Muslim woman can only marry a Muslim man.
- Deficiency
 - Articles 78-86 in the Ja'fari law discuss deficiencies in men/women, and if it is impossible to continue a married life with him/her, then a divorce is permissible (examples: erectile dysfunction or problems with the reproductive system). This can be proven by witnesses and swearing under oath.
 - 1959 law: proof of such a deficiency is done through official medical committees
- Man's right over his wife
 - Article 101 in the Ja'fari law states that a man can enjoy the pleasure of his wife at any time he wants and that his wife cannot leave their home without his permission.
 - 1959 law: the wife is not forced to do anything
- Polygamy
 - Ja'fari law allows for a man to have several wives, and it outlines the rules regarding polygamy.
 - 1959 law: does not permit polygamy. A man is not allowed to have more than one wife unless permitted by a judge and under the following conditions: 1) he must have the financial resources to support more than one wife, and 2) there must be a clear, beneficial reason.