



The Effect of Personal Status on Women in Iraq

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Introduction:

One of the laws that Iraq is proud of is the Personal Status Law No.188 of 1959 which has been in operation for more than 50 years, this law was able to combine the Islamic past in Iraq with what is acceptable from the laws of the Arab countries and what is settled by the Iraqi judiciary. The Iraqi legislator, from these sources, has imposed its legal rules binding on all. Thus, the Iraqi personal status law is similar to that of the Arab laws that have adopted one Islamic doctrine. The Iraqi Personal Status Law is one of its starting points and its purpose is to balance the legitimate interests of the members of society to preserve the family in all its components who represents the main building blocks of the family, namely women.

And after the release of the Iraqi constitution which became in force for 2005 (expectations were moving towards more rights to women in order to avoid the defects of the law, which do not deviate from any legal law, by modifying the legal texts that need to be amended and the cancellation of texts that became inappropriate or disabled due to the change and evolution of life.

Not by repealing the law and enacting a new law, because the procedure is at this time of it is possible that it will be exploited to stir the division between the people of the country, and therefore we will try through our study to show some of the problems faced by women that cause the loss of their rights under the Iraqi Personal Status Law with proposals to solve them by amending the law and not abolishing it.

First: The problem of marriage outside the court

Article 10 (of the Iraqi Personal Status Law in force to register the marriage contract in the competent court without drawing in a special register according to the following conditions:

1. Provide a statement without stamp includes the identity of the two contracting parties, age and the amount of dowry and the absence of impediment of marriage to be signed this statement of contractors which is documented by a selected person of the district or village or two people, trusted by the area.
2. The statement is accompanied by a medical report that supports the safety of the couple from transferred diseases and health contraception as required by the law.

3. The contents of the statement shall be recorded in the register and shall be signed by the signatories or their thumbprint in the presence of the judge and documented by him and give the couple an argument marriage.

Thus, the Iraqi legislator was intended to register the marriage contract documenting the marital relationship and the exclusion of the judiciary from going into the procedures to prove the marriage contract and the parenting of children to his father and protect the rights and duties of the parties.

If the marriage contract is concluded outside the court, article (10), paragraph (5), of the Act. The Iraqi Personal Status law shall be punishable by imprisonment for a period not less than six months and not exceeding one year or a fine not less than three hundred dinars and not exceeding one thousand dinars. Every man who holds his marriage outside the court shall be sentenced to imprisonment for a period of not less than three years and not exceeding five years if the contract is made outside the court for another marriage with the marriage.

However, some men marry away from the eyes of the judiciary due to some circumstances and then the wife may be harmed if she marries him outside the court and without her consent and obedience it isn't possible. The marriage outside the court has serious consequences, which is the cause of the social problems, the woman is the first victim of this marriage, this type of marriage was and continues to threaten Iraqi society, although the legislator has drawn up texts to deal with, but the legislative texts have not succeeded in protecting women from the negative consequences of this marriage.

It is noted on this article that has made the penalty of marriage outside the court on men alone with that of women.

We see that the reason for limiting the punishment to men without women is that the judiciary does not have the power to expand the interpretation of punitive provisions stated in the Personal Status Law and that the husband is the initiator of marriage, as well as taking into account the social aspects of women, and it is also taken on this article that it is decided to punish the husband without witnesses and the cleric and others who are usually involved in these things (1).

The law makes it easy to register a marriage contract by making it without a fee, but this does not prevent the continuation of marriage contracts outside the court. This is probably due to the fact that most cases of marriage outside the court are for girls under the legal age of 15 years or forced marriage or a second marriage without the consent of the judiciary.

And that married couples outside the court usually hide their marriage and conclude a new formal contract, or the couple will ratify the foreign marriage contract and

then the couple must appear before the judge and complete procedures relating to personal evidence, witnesses of the outside marriage board and the cleric who entered into the contract to formalize it (2).

But the problem arises when the woman later discovers she is pregnant and cannot issue the birth certificate to be inconsistent with the date established in the official contract and resort to modify the date of marriage outside the court and here we are in front of the crime of giving false information to be referred to the Court of Inquiry, but this is overlooked for social considerations.

If the husband denies marriage with the existence of the external contract, the court will summon the witnesses of the marriage council and after confirming the facts, then establishes the contract and completes the legal proceedings. If the marriage is oral, the court must verify the personal evidence.

If the prosecutor fails to prove his case, the judge has only a decisive oath to the defendant for the purpose of attesting to the fact of the external marriage, and in case the critical oath is not taken by the defendant, he loses the one who was given the decisive oath and the case of marriage outside the court is ratified.

There are also new methods of proof that can be resorted to in the pictures of special aspects of the case and correspondence through social media (3).

In the case of a child marriage outside the court, if the husband denies the paternity, the husband and wife shall be presented to a medical committee for the purpose of testing the paternity, including the examination of (DNA) and check the compatibility of tissues and medical report is the separator, and the reluctance of the husband to appear before the Medical Committee will be in favor for the wife of the ruling and the right of the husband in absentia as the father of the child. But if the claim of women on the paternity of the child isn't true, then the court will reject the claim and the wife will bear the expenses of the examination fees, which are high and estimated at one million two hundred thousand dinars.

Sometimes marriage and divorce are outside the court and with children, the judge must first ratify the marriage and then confirming the descent and ending with the ratification of the divorce.

If the wife is a minor and is prevented from appearing before the courts for the purpose of certifying the fact of marriage, then the case shall be brought against the minor wife and the forced guardian if he is alive and the guardian in case the forced guardian is dead.

If one of the parties to the marriage contract dies, the case shall be brought against one of the heirs of the deceased and according to the legitimate sector.

And in the event that one of the parties is missing, the lawsuit is based on the values and according to the argument of stone and value that proved the case of loss.

However, if one of the spouses dies and has children have not been proven parenting and has not been registered in the case register, if the children are adults, the case shall be brought by them by the heirs of the deceased parents for the purpose of certifying the incident of the marriage and proving the defendant's ratios.

If the children of the deceased are minors, the person caring for the minors must review the case courts for the purpose of issuing a temporary guardianship and after issuing the temporary custody argument, the temporary guardian shall be appointed in the lawsuit against the heirs and according to the legitimate sector that organized it (4).

That article (10) para. (5) of the Personal Status Law hadn't been useful to achieve the legislative purpose, and this is due to the following reasons:

- 1- Limit the punishment to the husband without the wife and witnesses and not to hold accountable the clergyman (Contractor), and this was the reason for the high rate of marriages outside the court.
- 2- The penalty of imprisonment is rarely imposed on the husband who violates the above paragraph and the courts are tempted to impose the financial fine on the husband only because he is the one who is charged with the illegality of the act.
- 3- The fines imposed for violating the provisions of this article are small fines, which must be amended in proportion to the size of the legal offense and what constitutes a deterrent in the face of such violation.
- 4- The spread of marriage contracts outside courts offices openly and unambiguously and became outlets for obtaining money. This is evidence that the above article was not successful in handling the case of marriage outside the court of divorce.

Second: Forced marriages

Article (9) of the Iraqi Personal Status Law, which is in force for the first paragraph, states that it is not permissible any cohabitation of any male or female person to marry without his consent shall be deemed to be null and void if the marriage is not entered, nor shall any of the relatives or non-spouses of those eligible for marriage under the provisions of this law marry.

The second paragraph provides that (anyone who contravenes the provisions of paragraph (1) of this article shall be punished by imprisonment, penalty of not more than three years, and a fine or one of these penalties if he is close to the first degree, but if he is a non-other, the penalty shall be imprisonment for not more than ten years, or imprisonment for a period of not less than three years).

The third paragraph (the Personal Status Court or the Personal Material Court to notify the investigation authorities to take legal comments against the violator of the provisions of paragraph (1) of the present article and to arrest him in order to ensure his presence before the mentioned authorities. Anyone who has been subjected to enforcement or prohibition has the right to review the investigation authorities directly in this regard, and this article is intended to deal with cases of forced marriage or prevention for tribal or illegal reasons, but it will not succeed in this. Including ambiguity, contradiction and confusion, which indicates that the amendment was born without a thorough study and scrutiny, as follows:

1- The marriage contract by force is considered void if it is not entered and this means that forced marriage can be recognized, and that the combination of nullity and in this disregard for the nature of invalidity and truth, the false contract is not accompanied by a vacation, and in it is a motive to circumvent the texts by seeking to expedite to enter into marriage, which was nullified by law by force legal and was the best heroes of this decade at all or to make it suspended like all other contracts made under coercion (5).

2- The law did not specify the concept of enforcement and did not specify its object, and did not distinguish between an objection based on a reasonable justification and an objection that is not so (6).

3- A man may be forced into marrying a woman to correct an assault on her and that is something of an interest to the women's abuse (7).

It is clear that the aim of this article is to save the women from a corrupted custom which she suffered from so much and which is forcing her to marriage and this enforcement takes many forms in our society and some of these forms are:

1- **Tribal dispute marriage:** This type of marriage is an old tribal custom which is a type of forced marriage where the women is given for marriage whom is a social victim of others' mistakes and takes responsibility for actions to enter them except that the perpetrator of the wrongful act is one of her relatives and thus the offender to prosecute a woman or a group of women to the victim or his family as compensation for crimes or reparation to the victim or his family.

This is due to the reintroduction of this type of marriage to the rule of individuals in the informal judiciary (because members of the clan feel shame if they resort to the

state and complain to the government for their own right (8), because resorting to the solution to his problems allow him to avoid exposure to prison sentences and avoids going into the proceedings of the courts and deal with lawyers, because the most needed by the aggressor is to resolve the dispute and end the impact, as for the victim, what he wants is to recover his right to a tribal meeting guarantee him an apology and compensation about the damage he has.

Compensation women do not enjoy any marital rights and often the husband is too old. Also, these women are not allowed to visit their family unless she gives birth to four children. Some of the clans consider divorced women or widows as half women, when it is agreed to grant three women to the village, six women will be given if they are divorced or widows. Therefore, during this marriage these women suffer from a very bad psychological state which in some cases push them to commit suicide.

This type of marriage can be considered another type of captivity, but in a legitimate manner, and despite the rejection of the law for this type of marriage, but tribal dispute marriage continues and the reason for its continuation is that the application of the law needs to be filed by the victim and in the case of women in the tribal dispute, she can't stand this lawsuit because her family will be against her and if they are with her, they will fear clan orders. In the case of her escape, she will be an outcast of her family or her clan and no one can help her during the court procedure as there is no shelter for violated women and girls. Finally, the marriage of the tribal dispute is contrary to the law because it violates the terms of the marriage contract stated in Article (6) of the Personal Status Law 9.

2. One by one marriage: This marriage is called marriage of alternatives. Under this marriage, the two families exchange women. This type of marriage is practiced in cities and not only in villages and rural areas, especially cities of tribal character, if a young man wants to marry a girl, he may have to marry his sister to a brother of his fiancée and this marriage if it achieves happiness for one of the parties may not be achieved by the other party and also any problem that will affect the life of one of them will be affected by the other party which can happen between one side may be the cause of the divorce of the other, and the reasons for resorting to this type of, marriage is easier because in terms of material, where each father prepares his daughter for the other groom, so it can be considered as a kind of exchange between two families and the item is the woman, and that the fear of the forced girl to marriage by her family is the most reason that does not show rejection before the judge and not tell him she is force to marry (10).

The treatment of such kind of marriage can be only by community awareness by Religious men and the media to the danger of forcing the girl to marry in terms of

legitimacy and awareness of problems. This marriage in the future is practically where the only victim is the woman.

3. Minors' marriage: Article (7) of the Law of Personal Status in force states that: (1- In the full eligibility of the marriage of the mind and the completion of the eighteenth years old) and based on the text requires marriage that the couples have completed eighteen years old and the legislator has authorized a person who has completed his fifteenth years old for a marriage request and the judge to answer when the fulfillment of the condition of puberty and consent of the guardian (11) but now it has become a phenomenon in our society the marriage of minors, it may be for the fear of parents on the girl from the openness of our society is to accelerate the marriage of their daughters to protect them, but this phenomenon has a lot of negative aspects highlighted by the high divorce cases of married because the young lack of psychological maturity and are unable to take responsibility, how can we imagine that a young girl is able to do the duties of the husband and take responsibility for the family.

4. Al-Nahwa marriage: this is an old tribal custom which forbids the girl from marrying a strange man from the tribe, woman suffered so much of this corrupt custom and the issue of the right of the cousin to marry his cousin despite the differences between them. The difference of cultural and social level make the him a husband is not important for him to marry his cousin and also the consent of the girl, and when she refuses her cousin then she collides with another obstacle standing in front of her freedom and future which is Al-Nahwa that makes it impossible for another man to come forward and marry her and if they get married they will face getting killed, which is another type of forced marriage (12)

The tribal strife is classified as a threat crime and the Iraqi Penal Code does not mention the term "Al Nahwa"; the perpetrators can be held liable for the threat (13). We find that through article (4) of the Personal Status Law, which provided for marriage to take place, the original purpose of this article is to facilitate the procedures of marriage, but this article was used to marry women without their consent and the person in charge is the father, grandfather or uncle and this article was used to compel women to marry.

The phenomenon of forcing women to marry is a phenomenon that exists both in the past and in recent times, a phenomenon that has negative repercussions, the most prominent of which is the disintegration of the family and the collapse of married life as it may cause multiple marriages because of the lack of consensus between them. The coercion of marriage also leads to the emergence of psychological problems for women and even their children. The most prominent of these is depression.

Therefore, it is necessary to educate societies so that women are not victims of tribal customs and treat them as an important entity, Society and not make them a marginal woman in the life of men.

Third: Wife's alimony

Article (23) the first paragraph states that (the wife shall be liable to the husband from the time of the contract even if she is a resident of the house of her family, unless the husband asks her to move to his home, so she abstains unlawfully), according to the second paragraph of the above article, her right to abstain as long as the husband has not paid her dowry or not.

The first paragraph of this article requires the wife to give the husband the right to alimony and make this charge starting from the hour of the contract thereon (14), because of the consequences of this contract, which included the retention of the wife in the interest of the husband and stating the necessity of maintenance (15) three conditions:

- 1- The marriage contract is valid according to Sharia, but if the contract is null or void, there is no alimony for the wife, separation must take place and there is no delay for the wife.
- 2- The wife is fit to enjoy her and achieve the purposes of marriage.
- 3- That the husband's right to hold the wife without legitimate justification and because not for its part as if her request for the wedding was rejected without an excuse, so she does not have to pay alimony.

The wife is entitled to refrain from moving to the husband's house if the dowry is not paid or not spent on it, the house that she requested to move to is occupied by the dwelling of others or a secluded place where she can't trust herself and so on. It is a legitimate abstention that doesn't cancel the alimony by the husband.

Article (24) of the Iraqi Personal Status Law, which is in force, (wife's alimony is not derived from a debt in the case of her husband from the time of the husband's abstention from spending.) Here the wife is obliged to prove a period of when the husband abstains from spending on the basis of the evidence based on who claimed and the right on the denied (16).

Article (24) of the Iraqi Personal Status Law states that it (alimony includes food, clothing, housing, supplies, medical fees, and the service of the wife, for example, so that the expense should include food, clothing, housing, medical fees and the wages of the servant.

Alimony (17) is divided into three types:

1- **Wife's' alimony:** And is due for marriage when the marriage is established and the husband cannot refrain from spending on his wife, though abstained, had the wife raise a claim for alimony to the husband to commit him to spending.

2- **Children's alimony:** Article (27) of the Iraqi Personal Status Law states that It is estimated that alimony for a wife according to their condition if it is well or bad and if there are children, then the judge when alimony is deserved and conditions are provided then the judge should rule for alimony for them.

3- **Alimony for time:** The is decided for the wife after she is divorced and the husband refuses to spend on her until three months are passed by.

However, the alimony stated by Sharia and the law for women falls in Nashiz, as article (5) states of the Iraqi Personal Status Law in force (paragraph 1) for the wife's expenses in the following cases: (a) if she leaves her husband's house without his permission; (b) if she is imprisoned for a crime or a debt; (c) if she refuses to travel with her husband without legitimate excuse.

It is the wife's refusal to obey her husband, and the punishment of the legal nashuz is the exhortation, then abandonment, then beating.

The wife is considered Nashiz under Iraqi law, if she leaves her husband's house without permission and without a legitimate reason, if she refuses to travel with her husband without a legitimate excuse or if she is imprisoned for a crime or a debt, then she will have no right for alimony.

As for item (2) of the above article it states that (The wife does not commit to obeying her husband, and she is not considered a nashiz

If the husband was abusive in asking for obedience to harm or restrict her and is considered arbitrary.

And damage in particular (18) hereinafter:

1 .The husband does not prepare for his wife a legitimate home that suits the social and economic situation of the couple.

2 .If the legitimate house is far from the work place of the wife so that it is not possible to reconcile their obligations home and rural.

3 .If the furniture supplied to the legitimate home doesn't belong to the husband.

4. If the wife is sick with a disease that prevents her from obeying her husband.

The sick wife doesn't deserve alimony if she became sick before the wedding and she is unable to move into the house or the wife became sick after the wedding and she moves to her fathers house and the husband requests that she goes back to their house and she refuses to do so although she can move (19).

Paragraph (3) of the above article states that the court should wait for the issuance of the sentence.

Paragraph (4) states that the court must rule on the wife's Nashiz after she has exhausted all her efforts to remove the reasons that prevent the obedience.

Thus, these two cases have led the court to wait before the sentence against the wife and finding out the reasons for the refusal of the wife to obey her husband and after that stand on it to make all its efforts to remove what can be removed from the causes of Nashiz, if it succeeded then it was good or it will rule to separation and reality in fact records the application of the judiciary to wait for the issuance of the ruling of Nashiz women because of the consequences of the rights that may be the husband has a big role in leading her to become Nashiz and depriving the wife of alimony is a crime against her. Is the exploitation of the wife's financial need not to spend on her as a cure, and how can women survive if they cut off their expenses? Article (25) of the Law of Personal Status of Law is to be repealed for following reasons:

- 1 .This article is considered in the ruling invalid because it is unfair to force the wife to obey her husband being in need of alimony.

- 2 .One of the issues of the Iraqi Personal Status Law is that it perpetuates inequality between men and women through the principle of the obligation to obey by wife to her husband and wife who doesn't obey her husband in law, in the Iraqi law is Nashiz who doesn't deserve alimony. It is necessary to work to eliminate discrimination between women and men and grant women the right to marry after obtaining the decision to rule the nashiz of the peremptory degree and the end of the period of the three months, and not overload women by depriving them of alimony and marriage for two years.

We believe that with regard to the fall of the imprisoned wife, we propose an amendment to preserve her right to alimony. It is stated that her right to alimony should not be deducted unless she is sentenced on the basis of a crime committed by her and the judgment is absolute provided that the husband does not have a hand in her custody. Paragraph (5) of the above article states that it is considered Nashiz for one of the reasons for separation. As follows:

- (A) The request for separation shall be made after two years from the date of the acquisition of the judgment of the court, and the court will separate in this case the deferred dowry falls, and if the wife has captured all the dowry, she is committed to return back half of what she had received. The husband asks to separate after acquiring the nashiz ruling and the court must decide to separate, the wife is required to return his dowry and her deferred dowry falls. If the separation is made before entering the dowry, the wife is obliged to repay half of his grip if she has captured all the dowry.

Article (27) of the Iraqi Personal Status Law provides that it is estimated that the wife's alimony of her husband according to their condition is whether good or bad. Therefore, the basis for estimating the wife's alimony is to take into account the marital status. This means that if the spouses are authorized to impose the wife of the expense of the good state and that they were insolvent imposed for them the expense of the insolvency although one of them is affordable and the other is insolvent. In case of difficulty, the amount that meets the necessary needs (20).

Article (28) paragraph (1) states that it is permissible to increase the maintenance and lack thereof by changing the situation. The financial spouses and the country's prices paragraph (2) provided that they accept the claim of increase or decrease in the alimony of the expenses imposed upon the occurrence of an emergency.

Article (31) paragraph (1) provides that during the consideration of the alimony case the judge may provide for a temporary alimony of the wife to her husband and that decision would be enforceable paragraph (2).

The decision shall be based on the original verdict in terms of its calculation or response. The provisions of this article shall be applied in its paragraphs to appoint the wife whose alimony to the probability of the court routine and the length of time required for the issuance of the alimony ruling. Article (32) states that the accumulated amount of alimony shall not be reduced by divorce or by death of one of the spouses (the reasons of this article to decide that this debt of alimony is a real debt does not fall by the death of any of the couple or by divorce. And with all these legal articles that sought to regulate the alimony of the consideration in that legitimate source, imposed by the alimony of the husband, but we find that the problems of alimony are:

1. That the wife's access to the alimony prescribed by law is facing difficulties, including the length of the proceedings. This is exhausting for women, as well as incurring legal fees, and then women suffering after receiving a provision for alimony of their own and their children from the inability to collect alimony because of the absence of the convicted person or the absence of funds for which he can be executed or because of his incapacitation and absence or his ability to pay alimony.
 2. The limited amount of alimony is barely enough to cover part of the wife's expenses.
 3. Often the husband refuses to pay the alimony on time and avoids paying frozen expenses, he claims that he is unable to pay.
 4. In all personal status cases, the burden of proof rests with the wife
- The amount of the husband's income in the expenses claims for the judge to spend her and then proof of his ability to pay for frozen alimony payments.

And we conclude the talk of alimony that the reality of the situation indicates that life seemed to move away from the obligation of the husband to spend on his wife and began to go to the cooperation of the couple in hypocrisy, especially since most women today are working women, a factor here we need to say the rule of law in the matter of guaranteeing the wife's right to the money that she will cooperate with her husband in the composition, while the money is legally the property of the husband alone if the husband disagrees with his wife and ended this dispute by law, we find that the woman will have suffered a large and unprotected by law is the guarantee of financial rights.

Fourth: Nursery

The nursery is meant to carry out the child's education and to fulfill his duties, which is the right to do so by law. The legislator of nursery one article nine paragraphs dealt with each paragraph regulation of the aspect of nursery and sought to ensure this provision of care for young people and achieve psychological stability necessary for the safety of growth and education by preventing the difference between father and mother nursery` of children and determine who is the incubator for children and determine the conditions of incubator article 57 (the first paragraph of the Iraqi Personal Status Law, which states that the mother is entitled to nursery of the child and raising him at the time of marriage and after the division unless the child is harmed by that), nursery is right for the child and mother together. If the mother dropped her right to nursery. The refusal of nursery of her son is rare and that the origin in the nursery is to take care of the young before any consideration and the mother had the basic role in the education of her children, the law interfered to preserve this right and protect them from the pressures that may be suffered by the husband, and improved the act of our Iraqi legislator when the mother granted the right in Kindergarten nursery and raising the nursery age from the seventh to exactly ten years old and authorized the extension to the fifteen if the interest so requires (21), and the consequent (22) so the following:

A - The mother is forced to nursery when there is no other even if the right was dropped, but if others found then she isn't forced to nurse.

B - If the mother was left by her husband in return for giving up the nursery then it was correct and condition is invalid putting in consideration the right of the child.

C - The mother does not have to make amend with her husband to leaving the nursery of her son such as giving up debt or alimony in return for that but she can amend about the fares of nursery because she has a pure right for that (23).

Fourth- 1 / Conditions of nurse and nursery of the divorced mother

Article (57) (paragraph 2) of the Iraqi Personal Status Law provides that it requires that the nursing person is highly intelligent, capable of raising and maintaining the child, and the custody of the mother is not diminished by her marriage in this case, the court shall determine the right of the mother or guardian in the light of the interests of the child.

We find that the conditions mentioned in the above article are legitimate conditions such as reason and maturity, including relative conditions and the likelihood is due to the judiciary, such as safety and the ability to raise and maintain the child as if they were old age cannot raise the child or working outside the house for long hours without having someone else to take care of the young child until she returns from work (24) then she will not be given nurse. One of the conditions that were not mentioned in this article is that the child doesn't live in a place of prostitution. Also another condition is not to be recessive because she will not fit this task, if she returns to Islam then the nursery will be given back to her returned but it does not require the union of religion between the child and the nursing person because the custody here meaning the Compassion and affection for the child and this is available when mothers are Muslim or non - Muslim (25).

Then this article came to determine that the custody of the right to mother even if she is married to another man and the court is to decide and considers the child's interest in being with the mother, despite her marriage, has kept him at her nursery otherwise the child is taken away and returned to his father.

Fourth -2/ The period of nursing

Article (57) of paragraph (4) provides that the father is allowed to look into the matters of the child and raise him up until he is ten years old and the court may authorize the extension of nursing of the youngest until the completion of the fifteenth if it was proved after reference to the committees of the competent and popular that the interest of the young child so as not to stay only with the nursing person).

We note that the legislator has equalized between the young girl and boy and made the length of the nursery of each is ten years and the father only have to supervise his

upbringing and education and he can choose school or kindergarten on the condition that he does not harm the child.

If the minor has completed the ten years and has becomes apparent after reference to the relevant committees that the interest of the young person is required to remain with the nursing person, the court may decide to extend the nursing period until the completion of the age of fifteen. The Iraqi legislator has made the maximum period of extension fifteen years if it is proved that it is in his interest and this is restricted by reference to the competent committees. When the father begins to consider the affairs of the preschoolers and his education during the period of original nursery or extension, the child should not stay only with his nursing person.

Article 57 (para. 5) states that if a person of 15 years of age has completed his or her studies, the right to live with any of his parents or relatives until 18 years of age.

The court of majority in this choice (and the meaning of this article that nursery ends in one of two ways:

1. The period of nursery is ten years and the child shall return to his father until fifteen years.
2. To extend the period of nursery at his mother to fifteen years.

In both cases, the child chooses after the age of fifteen to stay with whom he wishes his parents or one of his relatives until the completion of the eighteenth and then he has to live in his residence where he wishes.

Article (57) of paragraph (6) provides that the nursery who has completed her nursing by virtue of requesting recover of the child is sentenced to receive the child if the victim is found to be harmed during the period of his presence with him. This is a general rule for every nursery, mother or other, and whether the person sentenced to receive the child is the father or other. Where the child is harmed by the actual experience during his stay with his new nursery then the first nursery may request the court to recover him and the final statement to the judge after consideration and scrutiny and prove the nature of the damage and its causes.

Paragraph (7) of the above article states that in the case of loss of a minor's mother, one of the conditions of nursery, then the father has the nursery of the child unless it is for the interest of the child, then the nursery transfers to the one chosen by the court for the child's interest). Article (8) states that (if there is no one who is entitled to custody of the parents, the court will transfer the child to a trusted person to nurse the child. May be deposited with the State-sponsored kindergartens as they exist)

and thus the custody shall be transferred before the expiry of its term and as is evident under paragraph (7).

Paragraph (9) of the above article states that (A- if child loses one of the conditions of custody, he shall remain with his mother, as long as she has the conditions of custody without having his relatives of women or men right in conflict until he reaches adulthood. B - If the child's father dies and remain with his mother and married an Iraqi stranger in two conditions:

1. The mother must hold the rest of the conditions of custody and the court shall be satisfied that the child isn't harmed by staying with his mother.
2. The mother's husband pleads to undertake the marriage contract under the care of the minor and not to harm him.

(C) If the mother's husband fails to fulfill the obligation stated in section 2 (b), this is a reason for requesting separation by the wife, and this section revolves around the right of the mother to custody of her son from any of his male or female relatives in two cases: Conditions of custody of a disease or deviation or similar 2 - If the father died. This paragraph confirms the mother's right to custody in the event of the father's loss of one of the conditions of custody or in case of death. The father of the child is not entitled to his relatives of men and women fighting mother to custody of her children as long as she is retained the conditions of custody even if married to a stranger, and thus the best legislator is in the interest in which the mother's husband was required to pledge to care for his wife's children and not to harm them, so that he made the breach of his obligation a reason on which the marriage may be based on the request for judicial separation. However, the law did not place this condition on the wife of the father which is mostly harmful to the child.

Fifth: The problem of violence against women

Violence against women is a serious global phenomenon that threatens society including the unmarried girl and the sister. Today, we note that violence against women has even included mothers. We often hear about childlessness and abuse of children to their mothers. The reason for violence against women is likely to be the weakness of religious persuasion and difficult living conditions such as poverty, unemployment, poor education and violence and absence of a culture of dialogue and understanding within the family, and poor selection and disproportion between spouses in various aspects.

Violence against women takes many forms, including beatings of various kinds, insulting, scolding, contempt and expulsion, sexual abuse, physical violence, family neglect, intimidation, humiliation, exploitation, indifference and imposition of opinions on others. Violence against women can also hurt feelings, violates rights and compensate opinion and treating with unrespect underestimating her ability and potentials.

We can mention some of the forms of violence in the Iraqi Law:

1. The right of the husband to discipline his wife: Article (40) of the Personal Status Law states that each of the couple has the right to ask for separation if one of the spouses harms the other spouse or their children with harm that cannot be sustained (According to the text of this article, the legislator gave the wife the right to request judicial separation if she has been severely beaten by her husband and is caused serious damage. While Article (41) of the Iraqi Penal Code No. 111 of 1969 in effect to give the husband the right to use beatings in the process of discipline, and considers him one of the reasons for permissibility and truth and to use it when necessary, and provided that the limits prescribed law or custom. (27), the intentional beating is not intended to inflict bodily harm, as some may understand, but merely a way to express the husband's anger and displeasure with his wife, but the husband when he hits his wife to use this right often results from a light beating and if the beating exceeds the permissible limit to cause injury and direct physical harm, that act is considered a crime punishable under Iraqi Penal Code No. 111 for the year 1969 (28).

Therefore, we find that it may cause misinterpretation of the husband's right to discipline his wife stated in Article (41) of the Penal Code in problems because the concept of multiplication and its method vary according to culture Husband and the environment in which he grew up, and to avoid these problems call for the abolition of Article (41) of the law Sanctions because they have become inconsistent with the Iraqi constitution in force which equated men and women (29)

On what grounds does a man not have the right to beat his wife? Where is this equality?

2. Murder to wash away the shame: Article (409) of the Iraqi Penal Code states that a person shall be punished by imprisonment for a period of time not more than three years of surprise his wife, in case of adultery, or its presence in bed with her partner killed them instantly, or killed one of them, or assaulted them or one of them, an attack led to death, or to permanent disability. The right of

legitimate defense may not be used against anyone to benefit from this excuse and shall not be subject to the provisions of aggravating circumstances.

Honor crimes are a murder committed by a member of the family, towards a female in the family itself, and then the family claims that this killing was done to wash the shame.

After the occupation of Iraq in 2003 and the result of the occupation of the weakness of the law and social problems and terrorized many to exploit this reality by committing crimes against women under the pretext of dishonor. On the other hand, the law gives lenient sentences to the man, and the victim stands against the victim for social and religious reasons.

The fact that women are killed is a constant crime, and it is likely that they will continue to the absence of strict laws in punishing the offender and in turn force the power of the man and clan that they will not commit.

The penalty of the perpetrator of the crime of shame, ranging from several months to two years maximum, so call revising article 409 of the Iraqi Penal Code by equating it with the punishment of a perpetrator

Murder, because these crimes are not formed by mistake and are carried out with premeditation and surveillance, and keeping the text of this article is opposed to constitutional provisions that provide for the right to life, which is a fundamental right of human rights (30).

3. Women's right to inheritance: Women are often subjected to violence to relinquish her share of the inheritance, and deprived under the pressure of parents and customs and social traditions where she is forced to give up in fear of the cruelty of brothers and the violence against women, especially the right of women to inherit in agricultural lands. Women are deprived of it even though the law grants women their inheritance rights but cannot prevent violence directed against women to obtain their rights, which were robbed by the name of society and customs.

Sixth: analyzing the chosen category

Through a survey conducted the team of the Baghdad Women Association was deployed in the provinces of Mosul (Hamdania, Sinjar, Baghdad (Karkh and Rusafa) to collect data from targeted women by the legal assistance provided by the Association, where 45 cases were provided for assistance, study and extraction of the results are as shown by the following analysis:

Sixth – 1/Religion:

The number of Islamic women is 21 cases, equivalent to 47% of the total number of cases

While the number of Christian women was 14 and 31%, and there were 10 Women of the Yazidi religion, equivalent to 22% of the total number of targeted cases, (Figure 1 and 2.)

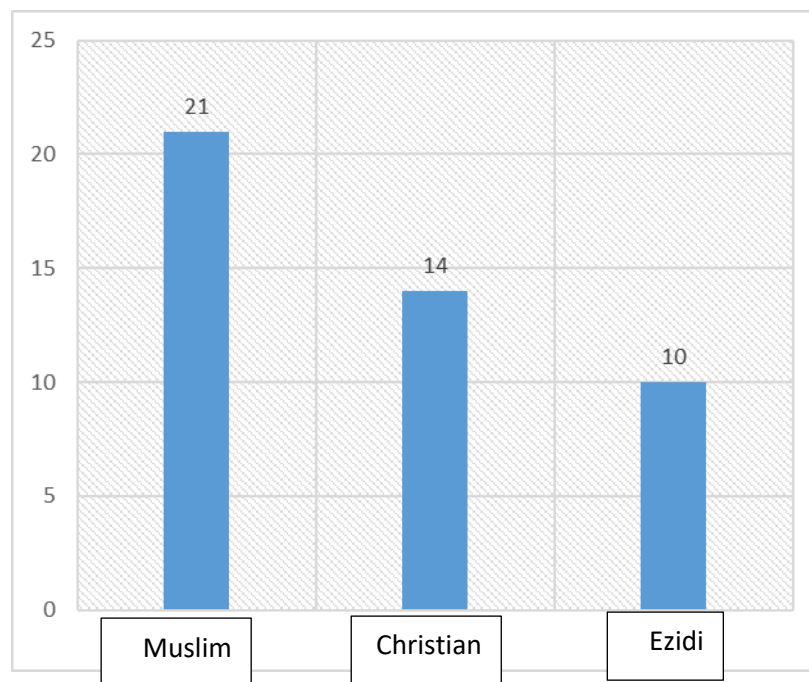


Figure (1) Distributing the category according to numbers

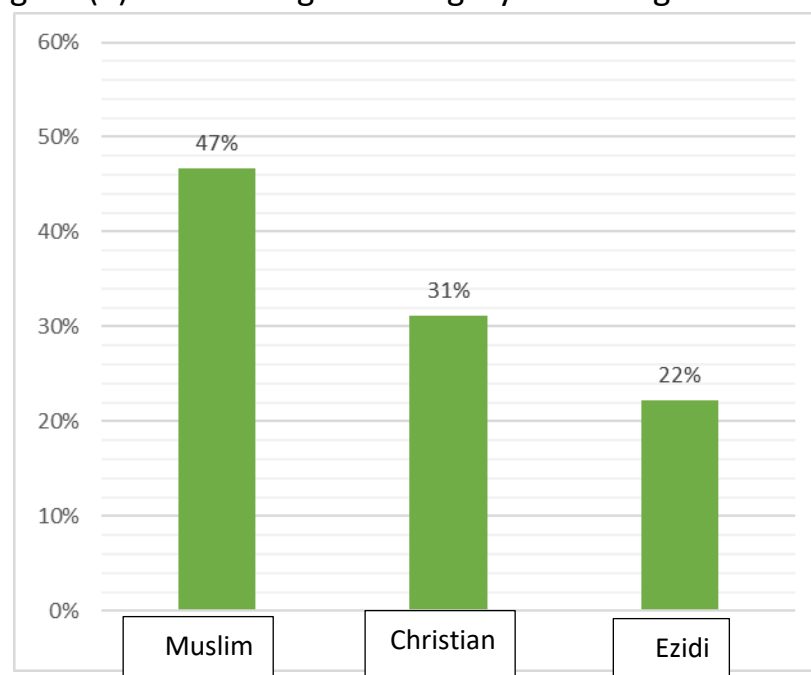


Figure (2) Distributing the category according to percentage

Sixth -2/Age:

Targeted women were divided into four age groups with a time interval of 10 years

Age group as follows:

1. Women born from 1969 to 1979 were 18%
2. Women born from 1980 to 1989 accounted for 40%
3. Women born from 1990 to 1999 were 38%
4. Women who were born in 2000 and above were at 4%

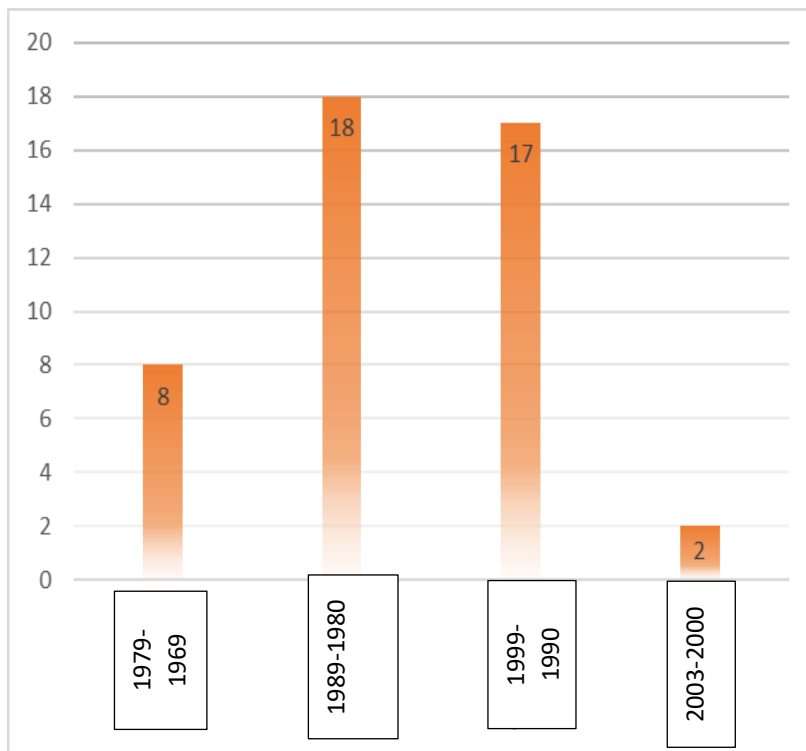


Figure (3) The distribution of numbers for the target age groups in numbers.

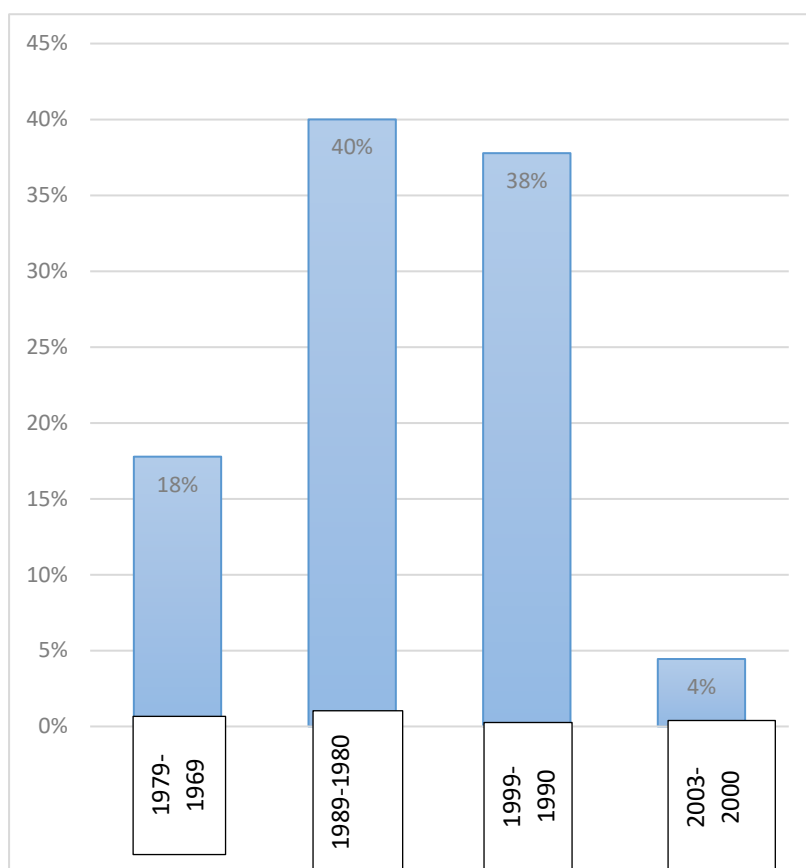


Figure (4) The distribution of numbers for the target age groups in Percentages

Sixth -3/Living:

Three sites were targeted for women and the numbers and percentages were equal by 15 cases per year

Areas were as follows:

1. Mosul - Hamdania - Qara Qush
2. Mosul - Sinjar - Siji village
3. Baghdad Karkh and Rusafa

Sixth -4/ Diagnosis of cases:

The cases included in the study, as shown in Figure 5 (Figure 6)

Shows the distribution of diagnosis by percentage. Figure (5) and Figure (6) show that the highest rate of cases experienced by women is related to alimony, 29% of the total sample of the study, while divorce cases ranked second by 15% and violence against women by 11%. The lowest rate is in the case of the second marriage, the reunification rate of 2%, then the inheritance, ratification of the marriage contract.

This indicates the high rate of divorce and spousal violence and the many cases raised in this regard. Women need legal assistance in this regard in order to get their rights in it, although most of these cases are concentrated in women between the ages of 1980 and 2000, i.e. those under the age of 40.



Figure (5) number of cases included in the study

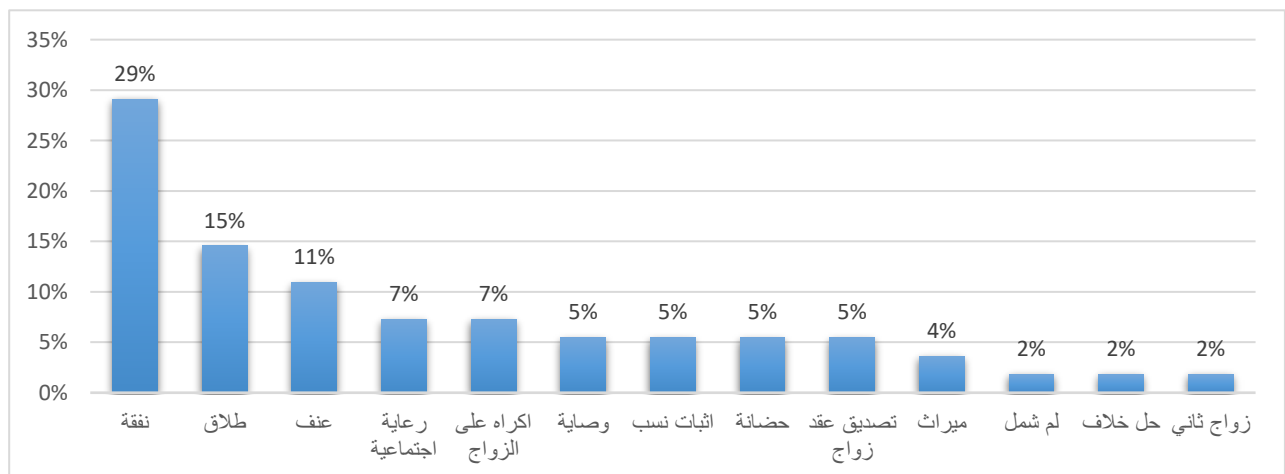


Figure (6) percentage of cases included in the study

Sixth – 5/ Given assistance:

The data based on the assistance provided was analyzed (where the case was considered. A review of the selected courts or field visits by the Guidance Center is a case in which assistance has been provided, Cases involving legal advice were considered to be cases in which assistance was not provided.

The results are shown in Table 1

No.	Type	number	percentage
1.	Assistance given	28	%62
2.	Assistance not given	17	%38

Table (1) Distributing the type of assistance

Sixth -6/Dealing with the cases:

In this part of the study, the cases were divided into two parts. The first part includes the cases that were reached positive result, reaching a result that satisfies the forwarded case. The second part includes the cases that were not resolved positively and as shown in the table (2).

No.	Type	number	percentage
1.	Decision positive	27	%60
2.	Decision negative	18	%40

Table (2) Distribution of the type of treatment

Recommendations:

Having outlined the problems facing women's enjoyment of equal rights for men in a legal framework of Personal Status, we conclude with recommendations to the woman herself, the government and the Bar Association. We hope to work to improve the status of Iraqi women and achieve equality affirmed by the Iraqi Constitution, namely:

1- Recommendations for women:

- How to protect Iraqi women and preserve their rights. This is only through the awareness of women, and their awareness of the reality of the rights granted to them by the law and the means of protecting them.
- Educating women not to waste their rights due to fear of society, customs, traditions and rejection. For all of these rights because the rights are to protect the people if the woman wasted her right then it was for others to not give her these rights.

2- Recommendations for the government:

It is time for the government to be responsible for protecting women's rights which was the first victim of war and terrorism and tribal conflicts and the government must:

- To close offices that conclude marriage contracts outside the court and to legislate an authorized law for the purpose of documenting marriage contracts outside courts and within the specifications of the authorized persons within the framework of this law and determine its powers, and then impose severe penalties in case of violation of the rules and powers established by law, and thus we will not end the problem of marriage outside but we will work to reduce them substantially.
- The re-emergence of women's coercion to marriage, which constitutes behavior that is rejected by law and socially requires everyone to take a serious position on them by emphasizing accountability of perpetrators and firmness to prevent the escalation of coercion of women to marry and activate the institution, community and state institutions so that the rule of law is above all.
- Approving the principle of rehabilitation of those who are coming to marriage through the holding of rehabilitation and educational programs for those coming to marry, under a law whose application shall be optional to take into account the various circumstances and so forth subsequent instructions shall be issued to regulate this.

- The mechanisms that can be adopted by the state to protect the rights of women and their children, which is a declaration of the alimony fund, where the fund meets the amount of the alimony and collects it in order to prevent women from being unable to actually collect alimony because of the absence or failure of the convicted person, provided that the Fund is financed from the general budget and allocated to it an annual amount.
- Adoption of the principle of letting the child sleep with the non-nursing person, whether father or mother, if the child reached six years and for three days combined to observe the holidays and continue the child with the non-nursing either mother or father.
- Despite the efforts made by the legislature since 2015 to legislate law of the Protection from Domestic Violence Act calls on the legislator to reconsider this law before issuing for the existence of many of the prosecutions and even re-named and called it Law on the Protection of Women from Domestic Violence.
- Re-examination of the fines imposed by the Personal Status Law as a penalty for violation such as non-registration of a marriage contract or forced marriage ... etc. (Because these amounts are small amounts to match with being a penalty for a legal offense).

3- Recommendations for the Bar Association:

- Calling on the Bar Association to activate the penalty of imprisonment for the husband who enters into a marriage contract out of court even if it is the minimum penalty because the prison sentence is up to six months is more deterrent than the fine imposed on the husband in violation of Article (10) Paragraph (5).
- The union work to spread awareness of women's rights through workshops, seminars and programs, training and awareness-raising lectures in schools targeting young people to plant concepts of equality between men and women to create a conscious generation of women's rights, which is half the society.
- Providing free consultations through the Bar Association of lawyers and lawyers who are specialized in poor women.
- Educate new lawyers through educational courses on the importance of professional secrecy which is a great guarantee of the rights of the parties to the lawsuit, especially women, because it is the weak party

who can be exploited by lawyers and the seriousness of the crime of revealing the secret of the profession which has a significant role on the life of a professional lawyer.

Footnote:

- 1- Ahmed Obaid Al-Kubaisi, the briefer in explaining the Personal Status Law and its amendments, Part I, Marriage and Divorce and their Effects, Al-Sanhoury Library, Beirut, 2015, P 60.
- 2- Abd Al-Kadir Ibrahim, lecture in Personal Status Law for judges of work, printed by typewriter, P 52.
- 3- Farooq Abdullah Kareem, the mediator in explaining the Iraqi Personal Status Law No. (188) for the year 1959 and its amendments, marriage contract and its effects and the band and its effects and the rights of relatives, University of Sulaymaniyah, 2004, P. 83.
- 4- Abd Al-Kadir Ibrahim, the previous reference, P 53-54.
- 5- Ahmed Obaid Al-Kubaisi, the previous reference, P 53.
- 6- Ahmed Ali and Hamad Obaid, Wid Mohammed Abas, Explaining the Personal Status Law, Baghdad, Ministry of High Education and Scientific Research, P 25.
- 7- Ahmed Obaid Al-Kubaisi, the previous reference, P 53.
- 8- Ali Al-Wardi, Study in the nature of the Iraqi Community, Al-Ani press, 1969, P 148.
- 9- Article (6) of the Iraqi Personal Status Law No. (188) for the year 1959 stipulates that: "A marriage contract shall not be concluded if one of the conditions of the meeting or health specified in the following is a union of the board of affirmation and acceptance. Marriage agreement c) Approval of acceptance of marriage certificate of two witnesses who have legal capacity to contract marriage).
- 10- Germaine Talion, Harem and cousins, History of Women in Middle Societies, Translated by Is al-Din al-Khatibi, Dar al-Saki, Beirut, 2000, P 34.
- 11- Article 8 of the Iraqi Personal Status Law states that if a person who is 15 years of age is required to marry, the judge may authorize him if his eligibility and physical fitness are proved to him after the consent of his legal guardian. If the guardian refuses, (The second paragraph of the same article states that "the judge may authorize a marriage of 15 years of age if there is a great need to do so and the requirement to give permission is required to achieve legal maturity and physical fitness").
- 12- Ahmed Obaid Al-Kubaisi, the previous reference, P 54.
- 13- Look at the articles (430,431,432) on the Iraqi Penalty Law number (11) for the year 1969.
- 14- This is what the article (58) confirmed of the law above that stated (The expense of each person of his money only the wife spent on her husband).

- 15- Ashraf Mustafa Kamal, Practical Problems in Personal Status Laws, First Book, Dar Al-Adala Publishing and Distribution, Cairo, 15th edition, 2015, P 20.
- 16- Article (7) of the Iraqi Evidence Law No. 107 of 1979.
- 17- Ashraf Mustafa Kamal, previous reference, P 22.
- 18- Ahmed Obaid Al-Kubaisi, the previous reference, P 104.
- 19- Ashraf Mustafa Kamal, previous reference, P 21.
- 20- Ahmed Obaid Al-Kubaisi, the previous reference, P 111.
- 21- (The child remains with his mother as long as he is not ten years of age, he has to extend his custody if the medical committee decides it) Decision No. 383 / personal status on 26/2/2001 see Ibrahim Al-Mashahadi, the legal principles in the Court of Cassation Court - 2002, P 144.
- 22- Ahmed Ali and others, previous reference, P 215.
- 23- Zaki Al-Din Shaban, the Legal Provisions of Personal Status, Libya, University of Garyounis Publications, Benghazi, 1993, p. 614, The Legal Provisions of Personal Status, Libya, University of Garyounis Publications, Benghazi, 1993, P 614.
- 24- Previous reference, P 261.
- 25- Ahmed Obaid Al-Kubaisi, the previous reference, P 216.
- 26- Stranger means that he is not a relative of the child from his father's side.
- 27- Article 41 of the Penal Code No. 111 of 1969 states that " there is no crime if the act is committed using a determined right by law and is considered an exercise of the right: 1. Discrimination of the husband and his wife ... within the limits of what is prescribed by law or custom".
- 28- Is punished in accordance with the severity of the harm, it is included in articles (412, 413, 414, 415 and 416) of the Iraqi Penal Code No. 111 of 1969 in force.
- 29- Article (14) of the Iraqi Constitution provides that Iraqis are equal before the law without distinction as to race, or religion.
- 30- Article 15 of the Iraqi Constitution in force states that "All rights to life, security and freedom shall be guaranteed."

Researchers in brief

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