



SYRIAN PERSONAL STATUS LAWS

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INTRODUCTION

Personal status laws in Syria can be considered to be the set of laws that is causing the most harm to its citizens. They control the private lives and family relations of every Syrian citizen from birth until death and derive their rulings from the religious doctrines of the country's different religions and sects. These laws encourage sectarianism and legal instability and violate human rights by restricting religious freedom and denying equality between citizens before the law and the judiciary.

In regard to gender discrimination, Syrian personal status laws have entrenched and reinforced the stereotypical traditional role of Syrian women, limiting them to the home. These laws further give male guardians the right to forcibly marry them off as well as allowing husbands to «discipline» their wives. Syrian personal status laws are based on the principle that the man is the head of the family, which undermines women's rights as human beings. This principle strips women of their dignity as adults, as it considers them incompetent and incapable of making their own decisions. By attributing sacred religious and social value to these laws, they take on the values of the patriarchal system and thus exercise increased control over the lives and rights of Syrian women.

These laws have had a profound effect on the lives of Syrian women: They contribute to their sense of insecurity and instability, inhibit their self-development in the personal and professional spheres and hinder their participation in the decision-making processes on both the public and private levels. The creation of an environment that is conducive to political, economic and social participation is made impossible.

Perhaps the issue at hand can be best understood by simply considering the title of this article. While it may be assumed that Syrians are subject to a single personal status law that guarantees equality for all citizens, the reality is, however, that a number of disparate personal status laws exist.

By default, these laws perpetuate discrimination between citizens that is based not only on gender, but also on religion and sect. This leads to the destruction of the social fabric and prevents the development of a nation in which its citizens are granted freedom of choice without the imposition of religious and sectarian ideologies.

THE LEGAL FRAMEWORK FOR PERSONAL STATUS LAWS

Historically, the Syrian Law of Personal Status was based on Resolution No. 60, issued by the High Commissioner in 1936 during the period of the French Mandate. It was known as the «system of religious sects», whereby Syrians were subject to the personal status laws of their respective sects. Following this, a series of religious and sectarian laws were issued in order to control matters of personal status in Syria. Of these, eight governed domestic issues, and all of them discriminated against women, regarding them as under-qualified and subject to the jurisdiction of the men in their family.

The Syrian Law of Personal Status was promulgated under cover of Legislative Decree No. 59 in 1953 by the Muslim judicial courts. It was referred to as a public law because, while it applied to only Muslims in matters of engagement, marriage, alms, divorce and custody, in matters of inheritance, it also applied to other non-Muslim Syrians from other religions and sects. The Law of Personal Status for Muslims is based on The Journal of Legal Judgments of the Ottoman Empire, which adopted the Hanafi doctrine¹ of jurisprudence and excluded the legal texts of all other Islamic doctrines. Druze and Christians, who are subject to their own personal status laws, are also excluded from Muslim personal status laws.

According to the judicial authority in Syria, the Sharia courts handle all the personal status cases of Muslims, while correspondingly, the Druze courts are responsible for the personal status cases of the Druze and the Christian courts for those of Christians. It should be noted that all those presiding over

these religious courts are men. In addition, those presiding over the Sharia and Druze courts are considered judges, while in the Christian courts they are in fact priests. Syrian women often suffer when resorting to personal status courts of any kind because of the complexity, length and expense of the procedures. Often, their inability to prove their case leads them to abandoning their rights altogether, especially when the case involves their children. The reason for this is that personal status issues overlap with many discriminatory laws and articles, such as the Syrian Nationality Law, which does not permit Syrian women who are married to foreigners from passing on their nationality to their children.

The Syrian Penal Code does not penalise marital rape. It encourages violence against women, waives the death penalty against the perpetrator in cases of honour killings, prohibits the use of contraceptives as well as abortion, does not punish offenders of sexual harassment and terminates criminal prosecution for the crimes of rape, abduction and sexual assault, should the perpetrator choose to marry the victim. Moreover, it is women who are punished for engaging in prostitution, rather than their clients, and any type of violence committed against women in the family is not punishable by law. Similarly, the Civil Status Law does not allow children born out of wedlock to be registered, which is currently one of the most contentious civil law issues in Syria. This has led to an ever-increasing number of unregistered children, particularly in recent years.

THE STATUS OF WOMEN IN SYRIAN PERSONAL STATUS LAWS

The personal status laws of the religious authorities – of all religions and sects – discriminate and promote violence against women by subjecting them to the rule and jurisdiction of men, thus bringing forth legislation that has deprived Syrian women of all their rights.

1- Doctrines: Islamic doctrines (Hanafi, Maliki, Shafi, Hanbali)

MARRIAGE

In Syria, marriage is a religious, not a civil institution. Muslim men are not permitted to marry any woman who doesn't belong to one of the monotheistic religions, and Muslim women aren't permitted to marry any non-Muslim man. Any child born out of a marriage considered null and void will not be legally recognised. Women who do not follow one of the monotheistic religions, such as Druze women, are required to convert to Islam should they wish to marry a Muslim man. Most Christian personal status laws in Syria also prohibit marriage between followers of different faiths or even of different Christian denominations. A civil marriage conducted abroad will not be registered in Syria if one or more of the parties involved is a Syrian citizen.

AGE OF MARRIAGE

All personal status laws in Syria permit child marriage, with some differences existing between one law and another. There is no legal provision that prohibits the marriage of children, especially girls, under the age of 18, which is the official age of majority in Syria. The Syrian Law of Personal Status permits the marriage of adolescent boys above the age of fifteen and the marriage of adolescent girls above the age of thirteen who have reached puberty and received the consent of their respective guardians. In the event of the birth of a child or a pregnancy, the law allows for marriage at an even younger age. The existence of such laws provides parents with the option of marrying off their daughters at a very young age.

Child marriage has many negative consequences for women. It can deny them opportunities in education, employment and rehabilitation, as well as bring about health and social disadvantages, which is reflected in their participation in public life. Early and forced marriages are widespread and are still practiced in some areas, particularly in rural parts of the country. The ongoing war contributed to the aggravation of the situation. Many girls inside the country, in camps and countries of refuge have been forcibly

married, either because their families were unable to support them or in the hope that a dowry would improve the family's living conditions.

GUARDIANSHIP

For all religions and sects in Syria, jurisdiction in family matters is given to the men of the family, allowing them to preside over all personal status laws. In matters of marriage, Muslim men have control over women, meaning a woman must receive permission from her guardian before being able to marry. Equally, her guardian has the right to annul any marriage that takes place without his permission, as women are treated as minors who cannot make independent decisions. The basic legal principle in Syrian civil laws states that guardianship is presided only over minors, and is a right granted to fathers and male relatives but forbidden to mothers or other female members of the family.

POLYGAMY

The Syrian Law of Personal Status permits Muslims to practice polygamy under certain conditions: «The judge may not allow a married man to marry another woman unless he has a legitimate justification for doing so and is able to financially afford supporting both wives.» Thus the legislator has left the matter of legal jurisdiction open to interpretation for the judge, based on loosely-worded conditions and with no specific criteria. For instance, the judge may choose to manoeuvre around the law by ruling in favour of a customary marriage, which will then be legally recognised once the woman becomes pregnant.

In order to ban polygamy, one must first strictly define what is intended by the legal justification as outlined in the Syrian Law of Personal Status. Further, the option of customary marriage outside of the courts must be deterred by increasing the penalty fine against such practices from the current 100 to 250 Syrian Pounds (around half a dollar) to a larger fine, as well as imprisonment. Moreover, the first wife should be able to cite the

husband's second marriage and any abuse she has endured as legitimate reasons for seeking a divorce, with the court subsequently granting her her rights and her dowry.

DIVORCE

The Law of Personal Status gives Muslim men the right to seek and obtain an administrative divorce without any conditions or restrictions, without any legitimate reason, without the need for a court case and without any interjection from the wife. Women, on the other hand, do not have the same right to file for an administrative divorce. They do have the right to file for a divorce in the Sharia Courts, but only in specific cases such as cases of marital conflict, harm, misdeeds, and absence or lack of financial provisions. Such proceedings, however, can be both lengthy and complicated. As for Druze women, divorce can only take place if allowed for by the judge. Christians have multiple and complex provisions for divorce, varying from denomination to denomination, and divorce cannot be administered by the husband alone but must be issued by the judge, based on a decision made at the religious courts.

CHILD CUSTODY

In matters of child custody, the Law of Personal Status of 1953 applies to Muslims and Druze. The other religious sects have their own provisions, in which custody is primarily determined by the age of the children, without taking into account the rights of the mother or the child's best interest. The only law that does take these into account in the matter of child custody is the Catholic personal status law.

Child custody is a contentious issue and has a significant impact on mothers going through a divorce, during which they are often subject to pressure and intimidation, as well as being restricted in their freedom of movement, travel and employment, not to mention being deprived of control or guardianship over their children.

INHERITANCE

In the personal status laws for Muslims, inheritance quotas are distributed among family members, where the share for men is double that for women. This law was applied to Syrians of all sects until most Christian denominations issued new laws in 2010, making inheritance equal between men and women.

DEVELOPMENTS AND ONGOING DEBATES IN SYRIAN SOCIETY

For decades, despite the facade of secularism, the importance given to matters of national security and the monitoring of clerics of all religions and sects, the Syrian government has made no substantial amendment to the personal status laws in the interests of women. Rather, it backtracked from its responsibilities over family matters and handed them over to religious authorities under the pretexts of preserving cultural identity, not wishing to interfere in religious matters and maintaining control over existing customs and traditions.

LAW AMENDMENTS

The Law of Personal Status was amended twice, in 1975 and 2003. However, the amendments were superficial, as they neither got rid of discrimination against women, nor were new laws introduced that granted the same legal rights to women as men. In 2003 and 2010, the Christian personal status laws underwent some amendments.

In 2009, the government introduced a draft personal status law that aimed to reduce the role and importance of women even more than before. This, however, was strongly rejected by women's civil society associations² and by civil society groups because of its discriminatory and sectarian content.

Some religious authorities found the bill to be interfering in their religious

2- The Syrian Women Association, Euromed Feminist Initiative, The National Association for the Development of the Role of Women, The Good Shepherd Sisters, The Committee for Supporting Women's Issues, The Syrian Intellectual Forum, The Syrian Women Platform, and others.

beliefs and people's privacy. Some Muslim clerics criticised it for being too hard-line, while some Christian clerics felt it undermined the Christian faith and Christian rights. The head of the Roman Catholic religious court, Priest Anton Mosleh, pointed to evidence of how the new bill was a step backwards from the old one. He argued that the amendments were merely brought forward as a way for the state to rule all citizens together under one umbrella. If the goal had been otherwise, the state could have simply put in place a civil law in line with international conventions.

The Sheikh of the Druze community, Hussein Jarbou, criticised the amendment, saying that it interfered with personal and religious beliefs. He praised the current law, saying: «Muslims and Christians have practiced their religions for thousands of years and no one will relinquish their sacred spiritual beliefs, be they public or private, for this is what has brought people together and created national unity, backed by the Constitution which gives all people the absolute freedom to practice their respective beliefs.»

The project was later withdrawn by the Head of the Council of Ministers and returned to the Ministry of Justice for judicial review.

CURRENT DEBATES

There is no political will to bring about a real change in the personal status laws in Syria. Rather, the state seeks to further entrench the politics of sectarianism and move away from the values of citizenship and equal rights. This is evidenced by the fact that the new Syrian Constitution of 2012 – which includes no provisions to abolish discrimination or violence against women and does not secure equality for women as full citizens of the state – has in fact emboldened sectarianism in an article which gives religious authorities the right to preside over the lives of Syrian citizens. The article reads: «Personal status is protected by and subject to each religious sect.» In practice, this provision gives personal status laws based on religious prerogatives constitutional immunity. The amended constitution

also states that the religion of the head of state is Islam, and considers Islamic jurisprudence a legitimate source of legislation.

This only confirms that under the current political system no fundamental amendments can be made to the sectarian laws that govern Syrian family matters, and that any change in personal status laws is by default contrary to the laws of religious texts. It is impossible to separate the public from the private when it comes to women's issues, for there is a close link between political and religious tyranny. It is in the interests of the regime to maintain the status quo, for only by keeping the religious and conservative classes satisfied and consolidating sectarian rule will the continuation of the hegemony of the regime be ensured.

It is in the context of maintaining the status quo that the ruling Baath Party did not abolish any discriminatory articles in the personal status laws. Rather, it merely carried out some formal changes in order to polish up its image, for instance by placing women in decision-making positions and establishing the General Union of Syrian Women. It did make some attempts to amend a number of articles in the personal status laws relating to simple matters such as child custody, without however changing the essential discriminatory nature of other matters such as marriage, guardianship, jurisdiction, and inheritance. In contrast, the Syrian Communist Party demanded modern and secular amendments to the Law of Personal Status which would guarantee equal rights for men and women. The Syrian Social Nationalist Party led the way amongst all the other parties by demanding the enactment of a civil status law.

For many years now, Syrian civil society has built a strong social movement which continues to call for reform in the country's personal status laws, including the abolition of restrictions on mixed and civil marriages, the prohibition of polygamy and the introduction of a civil marriage law that applies to all citizens without discrimination. Several civil society organisations, women's associations and feminist activists have called for

amending the current law and establishing a unified family law for all Syrians, based on international covenants on human rights and The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). They further demand to instil gender equality and equality between all Syrian citizens irrespective of religion or sect, based on the principle of full citizenship rights.

On the other hand, the strict positions of some religious authorities on personal status laws has meant that they have rejected any room for change, attacking those pushing for reform and calling them traitors and followers of loose and immoral western ideas. They also claim that the existing personal status laws are sacred and do in fact grant women their full rights. Some religious authorities from various denominations have indeed called for the gradual amendment of personal status laws in line with modern day needs and developments. Yet, they too maintain the need to rely on religious doctrines and texts so as to not go against religious jurisprudence.

CONCLUSION AND RECOMMENDATIONS

Despite everything, the need for equality before the law remains a fundamental and pertinent issue for women, who are among the most unjustly-treated members of society. Women require legal protection from the age-long discrimination they have faced, which rooted in a set of traditional customs and practices that continue to perpetuate their oppression. Hence the importance of just laws that serve to protect them and serve to counter the customs and norms that are otherwise difficult to modify.

First, a new gender-sensitive constitution must be established, based on the values and principles of freedom, dignity, equality, non-discrimination, and secularism, that cements the rights of women including the right to protection against gender-based violence. Since reforming personal status laws is such a contentious issue, it is important to work on establishing a

civil law for personal status matters as an optional alternative to religious personal status laws, which should only be preserved after having been reformed in a radical and substantial way.

Such reforms must include the provision of full gender-based equality and the equality of rights and duties between spouses within a marriage contract and the family unit. This encompasses matters of inheritance, the caring of children, the right to divorce and the participation in financial matters, as well as changing the legal marriage age for all sexes to 18 years, and finally, the abolition of polygamy. The reforms should be based on the basic principle that women are full citizens with equal rights. Therefore, they have the right to govern themselves and their children and to file for divorce, as outlined in human rights conventions and in CEDAW.

Equally, the Syrian Citizenship Law must be amended to allow for Syrian mothers to grant nationality to their children. Further, discriminatory articles in the Syrian Penal Code that encourage violence against women must be removed and a law that protects women from gender-based violence must be passed.

The abolition of these discriminatory laws should be a priority in the transitional period following the end of the Syrian conflict. In order for this to happen, it has to be ensured that women play an integral part in the shaping of a future Syria and are equally represented at the negotiation table. Women's rights and needs have to be part of the peace process from the outset. Only then can equal human and civil rights, as well as the right of self-determination for all Syrians, be truly applied and only then will women be able to play prominent roles in public life and exert influence over the laws, customs, and narratives of their country.