

The Family Law in Iraq... the reality and the challenges...

Introduction:-

The present report has been prepared in collaboration among many organizations working in various parts of Iraq like:- WLI in Baghdad and Basra, Al-Yoser organization in Hilla and the Center for the Development of the capacities of women in Erbil, in addition to adopting the efforts of the Iraqi women, Rafidain Women Coalition, Al-Amal Organization and Baghdad Women Organization.

Methodologies used in preparing of the report were:-

Implementing workshops

Implementing seminars

Meetings and seminars

Meetings with decision makers and influential in society

The need for Equality and Justice

Culture prevailing in Iraq is a male-dominated culture, in the socialization process and a clear preference for males over females in all aspects, as well the social inherited was carried in the customs and traditions that were still prevalent in most cities of Iraq and that could be touched in the popular sayings circulating in rural areas in the city...

But the most interesting thing about the society and the attention that since the establishment of the Iraqi state in 1921 has seen the direction of social mobility and education because of the cultural heritage which belongs to Iraq (the cradle of Iraqi civilization), Therefore, since the early historic stages, girls were received education and the schools were set up for girls since the twenties of the last century and girls entered the universities in different domains in the thirties of the twentieth century and in the forties of the twentieth century they stormed the political life in Iraq by working party and other political actors to participate in decision-making positions, in 1958 were appointed the first minister in Iraq and the Arab region, which is Dr. Nazeha Al-Dulaimi.

We believe that education is one of the important historical turning that encouraged women to take important roles within their family and society and they showed the real problems that have long covered by the economic subordination of women to men.

As for the issue of personal status was not codified and before the year of 1959 it was resolved through adopting the judicial precedents and the views and the jurisprudence of clerics.

Women's situation within the family

As already noted, the impact of socialization in the position of women within the family and the girl, although access to education, but she was in second place within the family, she has to start with domestic performance that she arranging things of her little brother, and she has to obey him and he would has the right to determine her movement, and sometimes beat her even she bigger than him. If the girl reached the age of 25, she would worry if no one wants to marry her, and if she reaches to the age of 35-40 years, she would be frustrated and desperate and considered as a real problem for her family.

As part of the socialization within the family, girl have to obey not only the father but also the brother, and as a result the husband when the good women who are obey the husband

and bear all his disadvantages or omissions, Although the laws in Iraq, for example, are equal the opportunities of education between girls and boys, but still girls' dropping out from secondary education is higher among females than males, and that's because of:-

Some families because of economic conditions, enforcing girls to leave the school while the boys keep in school so they do not have to go to the mandatory military service early, and the girl stay in the home and prepared by her family to be ready for marriage.

Because of the deteriorating security situation, some families prefer that girls not to continue her education in order to maintain her personal security, and sometimes because of lack of school buildings privatization for females close to the geographic location of residential areas and the lack of safe means of transport or inexpensive and not easy to access to school has caused the high rate of female dropouts from the secondary education in Iraq, particularly in rural areas and slums.

With regard to the labour laws are no laws explicitly prohibit women from jobs, but on the contrary, when there was a need for the efforts of women in times of wars Iraq has been relying almost entirely on the efforts of women's affairs in the administration of the country, but the end of the war and the return of the men from the fighting fronts made the government rebuild the functional structure and that women are surpluses of work and is supposed to be home and contribute to bridging the shortfall which happened in the population and therefore a lot of women lost their jobs and their source of income.

Although women are often the breadwinners of the family, but it is not a leader in the family because the head of the family in the Iraqi culture is the man, and though the Iraqi personal status law for example, is trying to preserve the rights of women in the event of divorce, but the law did not establish the mechanisms for guaranteeing the application and did not prevent the plight of women caused by the society and religious interpretations.

In Iraq regulating the family affairs and all what are relating to marriage, divorce, inheritance, guardianship and custody of children under the Personal Status Law No. 188 of 1959, which established after the claims of the Iraqi women's movement in the fifties of the twentieth century, and their insistence on the passage of the bill, which was built on an advanced reading of Islamic law, so its insure for women the following:-

- Right to retain the marital home after the divorce for a period of three years.
- The marriage age for female and male.
- Organizing the new law of children custody.
- The equation of the dowry of women in divorce with the price of gold at the time of divorce.
- The subject of polygamy, where the law relating to the consent of the first wife stipulate the financial adequacy in order to obtaining the consent to marry the second wife.

This law had been subjected to numerous amendments and that was mostly for the benefit of women, but in fact it was part of the requirements of the political situation, the political system tried through its vision of political reality and to beat some of the forces opposed to it, to politicize the personal status law was imposed to distinguish between the husband who left Iraq illegally from his wife if it was inside Iraq and demanded that the woman

who her husband are fleeing from the military service to brought the case to get distinguished from her husband, the fugitive from military service.

Here we can clearly point out that the issue of personal, since the early stages was one of the tools of policy in Iraq, if we follow up the history of the issuance of the personal status law in 1959, it faced many of the votes of the opposition of the clerics and especially the law when its tried to organize the inheritance among females and boys, which led to the decline of this paragraph on the law during the early sixties when there were bargains, and attempts to appease some conservative forces, as the historical sources ,the religious forces in Iraq, when the negotiations with the forces belong to Ba'ath party, which took power in 1963, were among their demands:- Cancellation of the Personal Status Act No. 188 of 1959, but some of the progressive forces and the Iraqi women's movement drove of these claims and maintained the law Thus, law are systemized the Iraqi family for more than half a century, and even though we acknowledge frankly that there are some of the law's paragraphs need to amendments and they are no longer appropriate to the reality of Iraq after the change of political system, but he is one of the laws developed in the Middle East, has helped many Iraqi women in facing the bad economic and security situation until the year of 2003.

The current difficulties faced by women in the area of personal status in Iraq after 2003

Interestingly, some of the attention of conservative political forces in Iraq, particularly the Shiite and during the rotating presidency of Mr. Abdel-Aziz al-Hakim, the Governing Council issued a resolution in 2003 no. 137, which provided for the abolition of the personal status law and the return of all matters relating to personal status to the clergy by the doctrine and the sect, But the Iraqi women's movement realized that and had a strong advocacy campaign of the abolition of this law, many international organizations and non-governmental women's associations has supported Iraqi women's demands and has already been cancelled the decision to keep the personal status law in force.

But the challenges are not over and when it is the Iraqi parliament was formed has set up a committee for writing the constitution and women faced the problem again where at the first draft of the constitution, article 41, which included the abolition of the Personal Status Law No. 188 of 1959 and return to the issues of personal faith and beliefs of communities and has faced by the Iraqi women's organizations at all levels of this article and called to cancel the maintenance of law and with the possibility of amendment in force since 2005 and so far because the constitution was not approved and he is in the process of amendment.

Women's efforts in Iraq have been able to transfer the issue to the personal and other vital issues that need to study all aspects But the maintain actors from its side also is working to mobilize the general public and a variety of pretexts for refusing law and uphold the new constitutional formulation which it's suggests that it has developed to ensure personal freedom for all Iraqi citizens, by the subject of personal status.

The arguments made by the maintain actors which demands the elimination of the law and make the Iraqi society return to the state of lawlessness are:

- Law No. 188 of 1959 is the law of the previous political system and should be abolished because the system itself had been abolished.
- This law violates the provisions of Islamic law.

- This law eliminates privacy sectarian of Iraqi citizens.

The Iraqi women's organizations were answered very clear on these arguments and that the law is based on an advanced reading of Islamic law and it's inconsistent with its provisions and it isn't only a civil law but it's prepared by the Committee of Experts and scholars the by adoption of what is best in all of the texts of the doctrine and collected in this law.

And about the abolition of sectarian privacy, this law was to maintain this privacy, and encourage the building of social cohesion away from the narrow sectarian tendencies under this law and when there is a marriage between men and women in Iraq the judge asks them in court:- about the doctrine would like to marry according to it and they are free to agree on this matter and the judge does not compel any citizen on anything.

And for the argument that this law is represent the former regime and it's a bad regime and we supposed to cancel anything remain of it, and women's organizations indicate that the law is always a product of the struggle of Iraqi women and the progressive forces ruled before the Ba'ath party in 1959, before the arrival of Saddam or the Ba'ath rule in Iraq. And we always refer to the abolition of the law and its risk on the families consisting of father is Shiite and mother is Sunni, for example, the mixed families constitute the majority of Iraqi society In addition the abolition of the law will contribute to the deepening of the sectarian tendencies and divisive community by faith or sectarian and the powers of the courts are also granted to the clergy and to some provisions narrow Which is part of the social heritage, customs and traditions that are contrary to the international regulations for example, find that the doctrines of one female at the age of 9 years is eligible for marriage and refuses to what was defined in the law that the age of majority is 18 years, other one from some doctrines say that the wife may not keep the marital home after divorce and she has to leave it because its man's rights only, other see that child custody is not for their mother but it right for their uncle, the brother of their dead father, or for their grandfather, that's why we find all these matters were organized by the Iraqi law Act 188 of the year of 1959, but the Act 41 of the law demands to cancel all these issues and return by the Iraqi society back to the case of lawlessness.

Problems faced the advocacy of the personal status law.

- The accusation of advocating the law is against the Islamic law.
- The Political parties worked on employing women to insure that the demands of cancelling the law will keep on going, and that aerated divisions in the Iraqi women speech which showed difference in women opinion.
- Women in Iraq couldn't create independent woman voice defending the women demands inside the Iraqi parliament in spite of the presence of 75 female deputies of 275 deputies.

In spite of that our campaign still continuing and we insist on keeping the personal status law and cancelling item 41 of the New Iraqi constitution despite the fact that this issue will be subjected to the political bargaining inside the parliament allowing implementing the constitutional amendments.

