

## **Legal Measures to Protect Women's Equality and Civil Rights in Kurdistan Region of Iraq**



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**ABSTRACT:** Equality involves ensuring equal opportunities for all and that individual merits are given equal weight, without any discrimination. The principle of equality demands giving equal values to those who appear before the law. Now the recognition of principle of equality before the law entails that everyone is entitled to effective protection against discrimination and also to enjoy human rights without discrimination.

Women in Kurdistan, just like women elsewhere in the world, can lay claim to the right to equality before the law, to freedom from discrimination and to certain economic, social, and cultural rights. The purpose of this paper is to discuss and examine how women's legal and civil rights are protected and to identify the extent to which the domestic legislation corresponds to Convention on the Elimination of all Forms of Discrimination Against Women.

The findings of this paper are that some laws have been amended to accommodate equality for women while others are still carrying the relics of the discriminatory laws and attitudes against women.

**KEYWORDS:** gender, equality, Islamic Shari'a, penal code, civil code, CEDAW.

### **1- INTRODUCTION**

Gender equality has been recognized and enshrined in numerous international and regional human rights instruments, including the main human rights treaties of the United Nations, in particular Article 26 of the ICCPR, which states all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other statuses.<sup>1</sup> Furthermore, Article 7 of the UDHR states that "all people are entitled to equality before the law and to equal protection of the law."<sup>2</sup>

States should review their existing legislation and draft legislation to make sure that it is not discriminatory. To ensure that they do not have a discriminatory impact, they must monitor the implementation of existing laws and regulations. They need to amend legislation and procedures to eliminate all types of discrimination and guarantee equality.<sup>3</sup> Examples of discriminatory procedural laws include: laws that give a woman's testimony less weight than that of a man; the laws which acquit a rapist if he agrees to marry the victim; the laws which allow using a victim's sexual history and behaviour as evidence, which should have been irrelevant if it was not for the discriminatory nature of the law and system that enact such laws; and laws that require evidence of physical violence to show a lack of consent in sexual transgressions.<sup>4</sup>

Inequality between women and men before the law has resulted:

"in unequal opportunities for women in education, access to health, economic participation and access to labour markets. These unequal opportunities result in disparities in, inter alia, salaries and compensation, public and political

<sup>1</sup>NavazKotwal, *Fair Trial Manual: A Handbook for Judges and Magistrates*(The Commonwealth Human Rights Initiative 2010) 10.

<sup>2</sup> Claiming Human Rights, *Definitions of the right to equality before the law*, Guide to International Procedures Available in Cases of Human Rights Violations in Africa <[http://www.claiminghumanrights.org/equality\\_before\\_law\\_definition.html](http://www.claiminghumanrights.org/equality_before_law_definition.html)>accessed 24 August 2019.

<sup>3</sup>United Nations Report of the Fourth World Conference on Women Beijing 4-15 September 1995 UN Doc.(1996) A/CONF/177/20, 232(d)

<sup>4</sup>United Nations General Assembly Independence of Judges and Lawyers UN Doc., Sixty-sixth Session Item 69 (b) of the Provisional Agenda Promotion and Protection of Human Rights: Human Rights Questions Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedom (10 August 2011) A/66/289,48

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participation, and access to decision-making, inheritance and ownership of land, obtainment of financial services, including loans, nationality and legal capacity. The lower status given to women leads to the increased vulnerability of women to mistreatment and violence.”<sup>5</sup>

Article 14(1) of the ICCPR expressly provides for the particular right of equality before the tribunals, stating: “everyone is equal before the courts and tribunals.”<sup>6</sup>This overall concept of the rule of law implies that each one has the right to fair access to the judiciary and that a case is dealt with without discrimination between the parties. This is a cornerstone in establishing the rule of law.<sup>7</sup> The right to equality before the judiciary means that countries must remove discriminatory attitudes otherwise the validity of criminal trials would be undermined.<sup>8</sup> Judges, prosecutors, lawyers, and law enforcement representatives must be educated in banning discrimination, identifying the multiple manifestations of discrimination, and the regulations that prohibit discrimination.<sup>9</sup>In addition, the right to equality before the judiciary needs comparable instances to be handled in comparable trials.<sup>10</sup>

Article 15(1) of the CEDAW stipulates that State Parties should give women equal treatment with men before the law. Women and men should be accorded the same legal capacity in all civil matters. They should have equal freedom to movement and taking up residencies. It demands the abolishment of all laws that restrict women's capacity to enter personal contracts. To achieve all these, based on these requirements of the CEDAW, we recognise the necessity reviewing of all laws and regulations of the relevant states.<sup>11</sup>

Islamic Sharia law requires that two females witness would be equal to just one male.<sup>12</sup>National laws based on Sharia have different effects on women in Muslim countries. The particular content of the legislation derived from the Holy Quran is largely dependent on the definition that lawmakers have chosen to give it and the aspects of its complicated utterances to which they have chosen to give weight.<sup>13</sup> For instance, women who fail to cover themselves face criminal prosecution in Iran and Saudi Arabia. Furthermore, a woman cannot move in Sudan and Saudi Arabia without the written consent of her male guardian. A woman raped in Pakistan must provide four adult male witnesses to prove the attack. If a woman has the misfortune of being raped without presenting the required testimony, she may be imprisoned for having pre-marital sex, which is simply unacceptable.<sup>14</sup>While Sharia helps to fulfil significant religious roles, it is essential to remember that what is deemed Islamic is muddled with local customs and traditions in many Islamic nations.<sup>15</sup>

While there are variations among Middle Eastern nations, the fundamental principle of these legislations is that women are the goals of regulation. The veil is symbolic of women's treatment in some Middle Eastern societies as well as serving as demographic demarcation, i.e, it draws a line between “Muslim” countries and the outside world.<sup>16</sup> Whatever the merits of the arguments in favour of the veil advanced by its proponents, the obligatory veiling of Muslim women represents the restriction of the choice of identity available to women. Some Islamic states define and impose identity as a female in the shape of the veil.<sup>17</sup>

## 2- EQUALITY BEFORE THE LAW

Legal measures need to be introduced to ensure that women have the same legal capacity to enter contracts, administer property, appear before the court, have freedom of movement, and have the right of choice of location and residence. However, to enjoy these rights, statutory and other personal limitations on women's legal capacity should be proclaimed null and void.

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<sup>5</sup> Human Rights Council, Resolution adopted by the Human Rights Council 15/23 Elimination of Discrimination against Women Fifteenth Session Agenda item 3 Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development (8 October 2010) A/HRC/RES/15/23,3

<sup>6</sup>Kotwal (n.526)10

<sup>7</sup>Human Rights Committee Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial General Comment No. 32( 23 August 2007) CCPR/C/GC/32, 2- 8

<sup>8</sup>United Nations General Assembly (n 528)26-92

<sup>9</sup> Committee of Ministers , *Recommendation CM/Rec(2010)5: On Measures to Combat Discrimination on Grounds of Sexual Orientation or Gender Identity* <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cf40a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a)<accessed 24 August 2019

<sup>10</sup> African Commission on Human and Peoples' Rights, Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Republic of Zimbabwe (284/2003) (Sixth Extraordinary Session 2009) 156.

<sup>11</sup>Catharine A. Mackinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987) 127- 129

<sup>12</sup>NisrineAbiad , *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (BIICL 2008) 28

<sup>13</sup>Leila Ahmed , *Women and Gender in Islam: Historical Roots of a Modern Debate* ( Yale University Pres 1992) 88

<sup>14</sup> Michele Landsberg, Human Rights Must Include Woman's Right to Escape Abuse, (Toronto Star 12 September 1992) G1.

<sup>15</sup> Elaine Sciolino, 'Islam: Feminists vs. Fundamentalists'(N.Y. TIMES, July 25, 1985) C1.

<sup>16</sup>Valentine M. Moghadam,*Identity Politics and Women: Cultural Reassertions and Feminisms in International Perspective* (Boulder: Westview Press 1994)14

<sup>17</sup> Ibid.

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Article 14 of the Iraqi Constitution (2005) provides for all Iraqis to have the rights of equal treatment before the law. Article 44, also contribute to equality. It grants the right to liberty of movement and travel, stipulating that "Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq".

However, the spirit of equality is not adequately reflected, in Iraq's 1969 Penal Code. Certain articles of the Code go some way towards protecting women and ensure the safety of both men and women in the majority of regulations. However, in penal code No. 111 of 1969, there are several discriminatory articles that are in force in Iraqi courts which are mentioned below, where the penalty is not equivalent for men and women because some male perpetrators can escape penalty even though they commit a crime. This goes against the principle of equality, as stated by Article 15 of the CEDAW. Many of the articles of penal code No. 111 of 1969 violate Article 14 and also Article 29(4) of the Iraqi Constitution (2005) that state that all forms of family violence and abuse are forbidden.

The Code of Criminal Procedure No. 23 of 1971 lays out the procedure for criminal trials. However, it has a number of obviously unjust and problematic contents for a number of situations. For instance Article 1 states that:

Criminal proceedings are initiated by means of an oral or written complaint submitted to an investigative judge, a [judicial] investigator, a policeman in charge of a police station, or any crime scene officer by an injured party, any person taking his place in law, or any person who knows that the crime has taken place. In addition any one of those listed can notify the Public Prosecution unless the law says otherwise. In the event of a witnessed offence the complaint may be submitted to whichever police officers or sub-officers are present.

This article on the surface of it does seem innocuous, yet many crimes have a disproportionate impact on women, such as domestic violence and honour killing; such offences may be hard to report, or may not be reported by victims themselves. This brings about the need for certain institutions to undertake instigating legal procedures on behalf of women who may not be in position for variety of reasons to report their own cases.

Another article that requires care examination is the Article 3 of Criminal Procedure Code which lays out:

- A. The complaint can only be set in motion on the basis of a complaint from the aggrieved party or someone taking his place in law in relation to the followings:
  - i. Adultery or polygamy in contravention of the law of personal circumstance.
  - ii. Slander, verbal abuse, divulging secrets, threats or slight injury provided that in offence was not committed against someone in the performance of a public service or because of it.
  - iii. Theft, rape, breach of trust, fraud, or acquisition of items by these means, if the aggrieved party is a spouse or descendent of the perpetrator and these items were not seized legally or administratively or legally transferred to another person.

Obviously, these articles require the active intervention of the victims or their legal representative. However, in many cases, the victim might not survive the crime or became incapable mentally or psychological to initiate legal procedure. For such situation the existence of independent institutions representing women become crucial if we are to implement the demands of CEDAW. (This is the second occasion in which we draw the attention to the need for the existence of independent bodies to defend women's right when they themselves lack the capacity to defend their own interests.)

There are also some subtle types of discriminations that pass without much reconsideration. For instance, Article 47 of Personal Status Law No. 188 of 1959, which is based on Islamic Sharia Law, requires the wife to obey a waiting period called iddat in the two following situations: if she and her husband are separated after consummation, whether through revocable divorce, minor or major irrevocable divorce, legal separation, annulment, peaceful suspension or choice of termination; or if her husband dies, even if such death occurred before consummation;

It seems the purpose of this law is to enforce Islamic formalities, otherwise, if it was to uncover pregnancy it could have been easier to undergo pregnancy test. Pregnancy tests reveal the condition within hour and this make waiting for period of Iddat, required by Sharia Law unnecessary.

Article 48 also implies some significant discrimination. It demands that if the woman has entered puberty but never menstruated, her iddat will be three complete months after divorce; when a woman is pregnant, she is required to keep the iddat of four months or for the remaining period until the baby is delivered; and, four months and ten days is the iddat for women whose spouse is deceased.

Here another source of unnecessary discrimination is revealed. The demand for the pregnant woman to wait the iddat period does not make allowance for the possibility that a couple marry despite the knowledge about the pregnancy. In case it is argued that the iddat is for uncovering pregnancy then one should ask why it should applied on women only and not equally on men and women. That is a clear violation of Article 14 of Iraqi Constitution and Article 15 of CEDAW.

While Article 14 of the Constitution and Article 15 of the CEDAW emphasise equality between genders, Article 102 of the Civil Code implies clear discrimination in the law. This Article states that "the natural guardian of a minor is his father then his father's guardian, his sane (of sound mind) grandfather, the grandfather's guardian, the court or the selected guardian appointed

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by the court". The patriarchal system described in this Article takes women's rights away through denial of its role in supervising the minor's assets. In contrast, Morocco, which is a developing, Islamic, and Arabic country provide equality for women and men regarding the guardianship of minors.

### 3- TESTIMONY

Article 6(1)(d) of Iraqi personal Status Law No. 188 of 1959 claims that two female witnesses are equivalent to one man. In the KRI, however, Article 6(1)(d) of Iraqi personal Status Law No. 188 of 1959 was suspended and replaced by the following: "Testimony of two witnesses having the qualification of legal competence, who have to bear witness for the marriage contract, in this paragraph men and women are equal."

The 1979 Evidence Law, No. 107 lays out the laws of evidence for all civil and commercial matters (except in conflict with the Personal Status Code).<sup>18</sup> The law contains no discrimination between women and men, and indeed "the court may rely on the testimony of one witness and the oath of the claimant if convinced of its validity... or reject the testimony of one or more witnesses if not convinced of the validity."<sup>19</sup> This indicates that the law judges the witnesses not by their sex, but by the importance of their testimony, which goes far beyond many other nations in the region. All parties and the court may ask the witness for anything that is considered useful for the verdict. This law does not pose any discriminatory issues for women. Additionally, with regard to the 1971 Iraqi Criminal Procedure Code, there is no law regarding evidence that discriminates between man and woman.

### 4- ADULTERY

According to Article 377 of Iraqi Penal Code - "(1) An adulteress and the man with whom she commits adultery are punishable by detention. The offender is assumed to be aware of the marriage unless he can prove that he was not capable of being aware of it. (2) The same penalty applies if the husband commits adultery in the conjugal home." This article is clearly discriminatory against women because it deals with women and men differently. It punishes women for adultery, meanwhile it prescribes punishment to men only when they commit adultery in their marital homes. This is in violation of Article 14 of the Iraqi Constitution and Article 15 of the CEDAW.

Even more importantly, this article does not allude to the consensuality of adultery. This leaves the victims of rape at risk of being considered and dealt with as adulteresses. In addition, from a legal perspective regarding women and adultery, adultery is an extremely problematic crime as it is mostly imposed on women. The law has been amended in Tunisia to guarantee that adultery can be punishable for both men and women. In Jordan, the crime is completely equivalent for both men and women.

Turkey presents another approach in dealing with adultery. In Turkey adultery is no longer a matter for punishment when the perpetrator is a man or a woman.<sup>20</sup> The Kurdistan parliament has changed Article 377 section 2. Previously, Article 377 (2) demanded that an adulterous man be punished only when the act occurred in marital house, but if the man has practiced adultery outside his home, he will not be punished. This Article is considered to be clearly biased against women who would be punished regardless of the location of adultery. For this reason the KRG has amended this section; now both married man and woman, who have committed adultery, will be punished by the same penalty as mentioned in section (1) Article 377.

In addition, Article 378(1) of the Penal Code No. 111 of 1969 stipulates that:

1. No action for adultery may be brought against either spouse nor may any measures be taken in respect of that action except on the basis of an accusation by the other partner. Such accusation will not be accepted in the following circumstances:
  - a) If it is made after 3 months from the day when the complainant first became aware of the offence;
  - b) If the complainant is content to resume married life despite having become aware of the offence;
  - c) If it is established that the offence was committed with the consent of the complainant.
2. By spouse in Article 378(1), it is meant any person who meets that description at the time of the commission of the offence or who ceases to be so following the offence. The right of the husband to bring an action for adultery committed by his wife continues for 4 months after he has divorced her.

As can be seen, this Article shows gender neutrality on the surface, which is an improvement on certain laws on adultery. However, in Iraqi and Kurdish society women do not have equal power to men. This means that a wife might be intimidated and thus incapable of complaining against her adulterer husband. She might not complain, in order to avoid losing her home and

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<sup>18</sup>Evidence Law No. 107 of 1979, Article 11

<sup>19</sup>Evidence Law No. 107 of 1979, Article 84

<sup>20</sup>SherifaZuhur, 'Gender, Sexuality, and Criminal Laws in the Middle East and North Africa: A Comparative Study' (Women for Women's Human Rights, Turkey 2005) 22

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family, particularly when she is not economically independent. She might avoid resorting to courts so that she does not face social pressure from her or his family. The point to be made here is that no clarifications are given regarding the circumstances in which 'contentment to resume married life' or 'consent' to adultery or delaying the complaint can happen. These clauses may be discriminatory in view of the financial and social reliance of women on their husbands. Thirdly, the final paragraph creates problems because it appears that only the husband, in violation of Article 14 of the Constitution and Article 15 of the CEDAW, can bring an action for adultery within the period of four months after divorce, which is blatant discrimination. Ultimately, adultery clauses are a problem for women because of the discriminatory implementation of such legislation.

### 5- RAPE

Rape is the commission of unlawful sexual intercourse or unlawful sexual contract. Discrimination against women and the violation of Article 14 of the Iraqi Constitution and Article 15 of the CEDAW manifest itself in Article 427 of the Iraqi penal code, which allows the judge to drop charges against a man when he marries a woman whom he abducted and raped. This clearly entails legitimizing violence against women.<sup>21</sup>

### 6- INHERITANCE

On the subject of inheritance, the Iraqi Personal Status Code (No.188 of 1959) lays down the law on inheritance; for example, Article 74(1) of the Iraqi Personal Status Code provides that if the child, male or female, dies before his or her father or mother, he or she shall be considered alive after the death of any of them. Article 89 (1) of the Iraqi Personal Status Code prescribes a share for a male inheritor from the inheritance to be twice as much as that of the female inheritor.<sup>22</sup>Moreover, Article 91 of the Iraqi Personal Status Code (No 188 of 1959) says:

"The husband is entitled to a quarter of the legacy when there is an inheriting descendent to his wife; and to half when the latter does not exist. As for his wife she is entitled to one eighth of the legacy where there is an inheriting descendant and to a quarter when the latter does not exist"

In the KRI, paragraph 1 of Article 91 of the Iraqi Personal Status Code was amended and replaced by, "The husband is entitled to a quarter of the legacy when there is an inheriting descendent to his wife; and to half when the latter does not exist. As for the wife, she is entitled to one-eighth of the legacy when there is an inheriting descendant, and to a quarter when the latter does not exist, after receiving her share of the legacy that she contributed to making it."<sup>23</sup>

It can be seen that this scheme of inheritance does not permit equal inheritance between men and women. They think that men have to support their wives while forgetting to consider whether or not the girl is not married. These amendments do some justice to women in comparison to the laws before. Nevertheless, it is not comprehensive enough to bring about complete equality between men and women. Unmarried women are entitled to receive half of the share of the brothers. The argument in support of this blatant discrimination relies on the contention that women marry and they will be provided for by their husband. But this does not cover for the possibility that the husband might be indigent and need to be supported by the wife. So this argument fails to justify the discrimination. This is a clear violation of Article 14 of the Iraqi Constitution and Article 15 of the CEDAW.

The case is different in Morocco, despite the fact that it is a developing country and an Islamic nation. According to the Moroccan Family Code (2004), husband and wife are permitted to receive equal inheritance from each other.<sup>24</sup>Turkey is also an Islamic majority country and has a law that grants the right to inherit equally among male and female children.

However, the Iraqi civil laws have a clear approach to ensure equality. For instance, Article 1188 (1) discussing the right of disposal (tasarruf) of government owned land and it says: "The priority for receiving inheritance is for the children and grandchildren of the deceased and the share of the male is equal to that of the female."

As is obvious, this article does not reflect any discrimination between sexes. However, it deals with state properties so the question arises why the same approach could not be applied to privately owned properties as well.

When talking about tasarruf, it should be taken into account that Article 1194 is part of the Iraqi Civil Codes and demands the equality of share for woman and man.<sup>25</sup> It is also significant that these Articles, 1188 and 1194, which are part of civil law, contradict the traditional Islamic inheritance law that discriminates between men and women and allocates double the share of

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<sup>21</sup> Simone Huser and others, *A Research on Challenges Facing Iraqi Women in Obtaining Legal Rights* (February 27-28, 2013) <[https://www.kas.de/c/document\\_library/get\\_file?uuid=4f82389b-a9a8-6861-45cf-47f9c50993e3&groupId=252038](https://www.kas.de/c/document_library/get_file?uuid=4f82389b-a9a8-6861-45cf-47f9c50993e3&groupId=252038)>accessed at 23 May 2019

<sup>22</sup> Personal Status Code No.188 of 1959, Article 89(1)

<sup>23</sup> Act No 15 of 2008 to Implement the Amended Law No. 188 of the Year1959 Personal Status Law in Iraq Kurdistan Region.

<sup>24</sup> Moroccan Family Code 2004, Article 31

<sup>25</sup>Civil Code No 40 of 1951, Article 1194 (1)

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women to male heirs.<sup>26</sup> As such, it is a favourable sign that Iraqi law incorporates gender equality standards, thus ignoring the Islamic tradition, which derives its justification from Quranic verse 11 (chapter 11, Surat An-Nisā', The Women), which states that "Allah instructs you concerning your children: for the male, what is equal to the share of two females." Moreover, these Articles (1188 and 1194) also contradict Article 2 of the Constitution which states: "Islam is the official religion of the State and is a foundation source of legislation: No law may be enacted that contradicts the established provisions of Islam." In the meantime they comply with Article 14 of the Iraqi Constitution (2005) and 15 of the CEDAW.

There are cases in which a daughter inherits more than a son and a sister of the deceased more than a brother. However, all these cases are specific to the inheritance from the female relatives and in no situation does a daughter inherit more than her brother from the father.

There are some cases where females inherit more than males such as: If the deceased leaves a husband, father, mother and daughter or son, the daughter is entitled to more share than the son; If the deceased leaves a husband, mother and sister or brother then sister gets more than double the share of her brother; If a woman dies leaves a husband, father, mother and two daughters.

### 7- CONTRACTUAL CAPACITY AND OWNERSHIP

In regard to the contractual capacity and ownership we find no discrimination. This entails compliance with Article 15 of the CEDAW and Article 14 of the Iraqi constitution. Under Article 93 of the Iraqi Civil Code, each individual has the (legal) ability to enter into an agreement unless the law determines his or her incompetence or restricts his or her competence. Here, the use of 'individual' is encouraging. Women have a strong legal foundation in the equality of agreement in order to be appropriate and correct. A contract must be produced by 'full-capacity parties' with a legitimate cause and valid characteristics.<sup>27</sup> These articles of the Iraqi Civil Code give women the authority to formulate agreements with males on an equal footing.

Regarding the investment and exploitation of properties, Article 1048 of the Iraqi Civil Code says: "Full ownership will avail its holder/possessor to absolutely deal out with whatever he/she possesses, be it in terms of the owned object itself, its utility or its exploitation. He can utilize the owned object, its harvest/crops/, fruits and products as well. Additionally, the owner can subject his/her possession to all legally permitted transactions." As to the definition of ownership, the Iraqi Civil Code 1049 (1) says: "The owner of a thing also owns everything which is deemed by usage to constitute an essential element thereof such as it cannot be separated therefrom without the thing owned perishing, deterioration, or changing."

This code does not discriminate against women, and together with Civil Code 1050, can empower women to participate in property holding at an equal level with men and provides them with equal protection for their investment. Civil Code 1050 states: "No one can be deprived of his ownership except in the cases and in the manner provided for by law and in consideration of a fair compensation payable in advance." Articles 1048 and 1050 of the Iraqi Civil Code are compliant with Article 14 of the Iraqi constitution and Article 15 of the CEDAW, because they grant equal contractual capacity to women and men and equal rights for property ownership.

### 8- THE RIGHTS TO TRADE

Both women and men are subject to the regulations of Commerce Law, No. 30 (1984) on the promotion of trade, provided that legal capacity has been achieved. This allows a female to participate in business without needing the consent of her father, brother or husband. The provision of this law applies in Iraq and the KRI. This right to trade is compliant with the CEDAW conventions.

### 9- FREEDOM OF MOVEMENT

Freedom of travel for all males and females is guaranteed in accordance with Article 44 of the 2005 Iraqi Constitution, as mentioned, where it ensures the right of equal treatment to Iraqis before the law and Article 44 guarantees freedom of movement and transportation, stipulating that "Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq". There is no law in Iraq or the KRI that restricts women's freedom of movement. This right reflects compliance with Article 14 of the Iraqi constitution and Article 15 of the CEDAW.

## CONCLUSION

From the above we infer that there are a number of discriminatory Articles in the penal provisions, for instance, as mentioned before (penal Law No. 111 of 1969), which is still in force in Iraqi courts. Such a law sanctions different punishments for the same crime if they are committed by the opposite genders.

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<sup>26</sup>Dan E. Stigall, 'Iraq Civil Law: Its Sources, Substance and Sundering' (2006) 16 *Journal of Translational Law and Policy* 1, 62

<sup>27</sup>Civil Code, Article 133

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More hurtfully some offenders are able to escape punishment despite committing a crime as consequence of Article 377. Fortunately, this law has been amended in Kurdistan Region. What is not amended as yet is another law which allows a rape perpetrator to escape punishment and all legal procedure against him will cease if he accepts marrying his victim.

On deeper inspection of Criminal procedure code appears that many of the provisions may, in fact, make it more difficult for women to bring complaints to trial. As we noted before in case of adultery that only a spouse is permitted to file a case of adultery on the his or her spouse. Yet, in Kurdistan the fear from husband, the culture and status of women hinder women from taking their husbands to courts. This is why it is essential that a third party should be permitted to file a case on behalf of the female victim.

Another point worthy of mentioning in this conclusion concerns the Articles 47 and 48 of Personal Status Law No. 188 of 1959. These Articles clearly discriminate against women, as only women are required to observe the waiting period before remarrying.

Regarding testimony, in Kurdistan, men and women are equal, testimony of witnesses from either gender have equal weight. Unfortunately though the picture in even in Kurdistan is not completely rosy. Under the Personal Status law (based on Sharia law), women have a right to less inheritance than their male relatives. Daughters receive half the share sons receive and if there is no son, the inheritance is split with her uncles. This can leave women in financial difficulty when left with little to no inheritance in a society where they still rely on income from husbands or fathers.

We should avoid giving the impression that most Iraqi legal rules are against women. Indeed, the Iraqi civil code gives women the de jure power to formulate contracts on an equal basis with men. Also, in Article (46(1), 1048, 1049, 1050 respectively) of Civil Code (No. 40 of 1951) allows women to participate in property holding at an equal level, and provides them with equal level rights, and provides them with equal protection for their investments.

### Suggestions

1. Amending Article 378 of Iraqi Penal Code, to allow a third to file a case against the adulterous husband on behalf of the wife.
2. Removing the Iddat period, the waiting period for women before remarrying.
3. Amending the discriminatory inheritance law so that female and male heirs receive equal shares.

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## **Legal Measures to Protect Women's Equality and Civil Rights in Kurdistan Region of Iraq**

### Legislation

Iraqi civil code

Iraqi penal code No 111 of 1969

Iraqi Evidence Law No. 107 of 1979

Iraqi Commerce Law No. 30 1984

Iraqi personal status code No.188 of 1959

Iraqi civil code

Iraqi Real Estate Law No.34 of 1971

Moroccan Family Code 2004