

IRAQ



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Gender Justice & The Law

DOES THE LAW ENSURE GENDER EQUALITY AND PROTECTION FROM VIOLENCE?

The colour codes indicate whether the laws comply with international human rights standards, the recommendations of the UN Committee on the Elimination of Violence against Women, and recommendations of the country's Universal Periodic Review.

YES

The law provides for gender equality and/or protection from gender-based violence and is substantially compliant with international standards. A green category does not indicate that the law is perfect or that gender justice in the relevant topic area has been fully achieved.

NO

The law does not provide for gender equality and/or there is no or minimal protection from gender-based violence.

Partly

Some gender justice aspects of the law have been addressed, but important gender inequalities remain.

No available data or inadequate information.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Iraq acceded to CEDAW in 1986 and maintains reservations to Articles 2(f), 2(g) (policy measures; modification of laws), Article 16 (marriage and family life), and Article 29(1) (administration of the convention; arbitration of disputes). In 2014, Iraq withdrew its reservation to Article 9 (nationality)

Constitution

Article 14 of the 2005 Constitution provides that Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, colour, religion, creed, belief or opinion, or economic and social status.

NATIONALITY LAW

NATIONALITY

The Nationality Law No. 26 of 2006 enables women to pass their nationality to their children born in Iraq in the same way as men. A woman cannot pass her nationality to her foreign spouse in the same way as a man.

CRIMINAL LAWS

Domestic violence

Article 29(4) of the Constitution stipulates that: "All forms of violence and abuse in the family, state and society shall be prohibited." There is no federal domestic violence law. Article 41 of the Iraqi Penal Code of 1969 states that disciplining of a wife by her husband is the exercise of a legal right. The Court of Cassation has decided that beatings fall within the concept of disciplining. The article also permits parents to discipline their children. In Kurdistan Region of Iraq, the wife was excluded from Article 41 by Decision No. 7 of 30 June 2001. KR-I has a Law to Combat Domestic Violence in IKR, Law No. 8 of 2011.

Abortion for rape survivors

Article 417 of the Penal Code criminalizes abortion. There is no specific exception permitting abortion for rape survivors. It is considered a legally mitigating circumstance for a pregnant woman to procure an abortion because of shame. Yazidis who are survivors of ISIS are not allowed to have an abortion.

Female Genital Mutilation / Cutting (FGM/C)

There is no national law prohibiting FGM/C. Article 2 of the Domestic Violence Law of KR-I, Law No. 8 of 2011, defines FGM/C as a form of domestic violence. Article 6 of the same law prohibits FGM, with penalties for anyone who conducts, abets, or contributes to this practice.

Marital rape

Marital rape is not criminalized by the Penal Code. Criminalization of marital rape will require the amendment of the Personal Status Law to abolish the wife's duty of obedience to her husband. Article 41 of the Penal Code provides a defence where conduct is the exercise of a legal right.

Sexual harassment

Sexual harassment in the workplace is prohibited by the Labour Law. Some forms of sexual harassment are prohibited by Articles 400 and 402 of the Penal Code. These offences include committing an immodest act, making indecent advances, or assaulting a woman in a public place in an immodest manner.

Human trafficking

The Law on Combating Trafficking in Humans No. 28 of 2012 prohibits human trafficking and addresses prevention and protection measures.

Rape (other than of a spouse)

Rape and sexual assault are criminalized by the Penal Code, Law No. 111 of 1969, Articles 393 and 396. The death penalty may apply in some cases where there are aggravating circumstances. Rape is a special offence. The state can only take action if the victim complains.

Femicide: Mitigation of penalty (so called 'honour' crimes)

Article 128 of the Penal Code provides for a reduced sentence for perpetrators of honour crimes. Article 409 provides mitigation for a person who surprises his wife or one of her *mahrams* (close relatives) in the act of adultery and kills or assaults her. This article has been amended in KR-I so that the killing or harming of women under the pretext of honour is not a mitigating factor (Decision No. 59 on 12/4/2000).

Sex work and anti-prostitution laws

Prostitution is prohibited by the Anti-Prostitution Law No. 8 of 1988 and the decisions of the dissolved Revolutionary Command Council promulgating this law.

Exoneration by marriage

Article 398 of the Penal Code allows a perpetrator of rape to escape punishment by marrying the woman he raped. If the offender lawfully marries the survivor, the legal action becomes void, any investigation is discontinued, and any sentence that has already been passed is quashed.

Adultery

Adultery is an offence under Article 377 of the Penal Code. Adultery by a woman is a misdemeanour punishable by a sentence of three months to five years. The same penalty applies if the husband commits adultery, but only if he commits adultery in the family home.

PERSONAL STATUS LAWS

Minimum age of marriage

According to Article 7 of the Personal Status Law, No. 188 of 1959, the legal age of marriage is 18 years for both men and women. The age can be lowered to 15 years with the guardian's consent and judicial permission. In KR-I, the Personal Status Law was amended by Law No. 15 of 2008, so that the age of marriage can be reduced to no lower than 16 years with the guardian's consent and judicial permission.

Guardianship of children

The father is the legal guardian of his minor children. In KR-I, Law No. 6 of 2015 gives the parent who has custody of the children the right to supervise the child's affairs up to the age of 18 years.

Male guardian-ship over women

Adult women are not required to have a male marriage guardian. Iraq has abolished the role of a male marriage guardian, except for approval of underage marriages.

Custody of children

In cases of divorce, women have custody of children up to the age of ten, which may be extended up to the age of 15. After that, the child has a choice between being with his father or mother.

Marriage and divorce

The Personal Status Law requires the husband to maintain the wife. The wife owes obedience to the husband. A husband can divorce by repudiation (*talaq*). A wife has the right to divorce on specified grounds. She can also apply for a *kul'a* divorce without grounds if she forgoes financial rights and the husband consents. Article 23 of the Personal Status Law was amended in KR-I in 2008 to state that the wife is entitled to maintenance from the husband, but if the wife is also financially capable, the cost of her financial maintenance shall be shared between them provided that the wife agrees to this.

Inheritance

Under the Personal Status Law, women have a right to inheritance, but in many cases receive less than men. Daughters receive half the share that sons receive.

Polygamy

Polygamy is permitted by the Personal Status Law, subject to judicial authorization. The conditions for polygamy are stricter in KR-I, and include: (1) authorization of a judge; (2) approval of the first wife before the court; (3) if the wife is afflicted with a disease or if the wife is infertile, these conditions have to be medically certified; (4) the husband must provide official documents to confirm that he has financial ability to support the wives; (5) the husband's written undertaking to treat his wives fairly and equally; (6) the wife must not have set a condition in the marriage contract that her husband must not have a second wife.

LABOUR LAWS

Right to equal pay for the same work as men

The right to equal pay for work of equal value is provided by Article 53 of the Labour Law No. 37 of 2015.

Domestic workers

Article 3 of the Labour Law states that the Labour Law covers domestic workers. The Labour Law provides protections to domestic workers, including by prohibiting discrimination and forced labour.

Dismissal for pregnancy

There is no provision in the Labour Code specifically prohibiting the termination of employment based on pregnancy. Employers are prohibited from discriminating against women in employment by Article 11 of the Labour Law.

Paid maternity leave

Under Article 87 of the Labour Law, women are entitled to 14 weeks of maternity leave, which is paid by the employer. There is a lack of compliance by employers with this legal requirement. Civil servants are entitled to six months leave with full salary and six months leave with half salary.

Legal restrictions on women's work

Women may not be recruited to perform arduous work specified in accordance with executive instructions issued under the Labour Law. Women are prohibited from working at night, with exceptions, such as in cases of necessity or unforeseeable events (*force majeure*).