

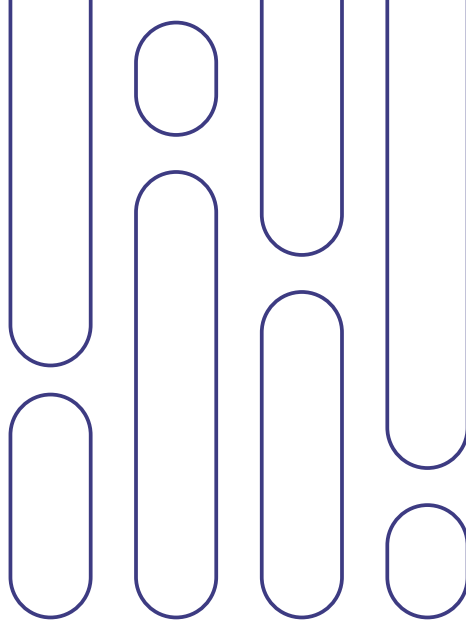
REPORT

The Proposed Amendments to Personal Status Law in Iraq: Between Sectarianism and Civilian Rule

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A significant religious and political conflict has recently emerged in Iraq, primarily involving the Shiite parties, particularly the Coordination Framework bloc (CF), and the secular or civil movement. The controversy centers around the bill to amend the 1959 Personal Status Law (Number 188), which aims to institute the Jafari school of law for Shiites and Hanafi school of law for Sunnis into Iraq's personal status legislation. This proposal, supported by the CF, has faced intense backlash from activists and civil society groups. Critics argue that the new law could enable child marriage, further oppress women, and rob them of custody rights, among other concerns.

The debate over the proposed amendment to Personal Status Law No. 188 of 1959 has resurfaced as some proponents push for its passage despite previous delays. Last July, the Iraqi Parliament was compelled to postpone consideration of the law in response to a surge of criticism from civil activists, human rights organizations, and international bodies. Following the completion of its first reading on August 4, 2023, the draft law will undergo two additional readings and further discussion by the Parliament before a vote is held to determine its enactment. This report aims to explore the reasons behind the disagreement between the sectarian and civilian factions regarding the proposed amendments to this legislation. It also examines the potential for reconciling their differing viewpoints and assesses the stance of both Shiite and Sunni religious authorities on the proposed amendments.

Why Now? Context and Timing

An important question arises regarding the reasons behind the CF's insistence on amending the Personal Status Law at this time. Despite the fact that the current Personal Status Law No.

188 of 1959 does not require fundamental revisions and could be implemented until extensive community consultations, including input from all societal segments, were completed, the CF is pushing for a swift amendment. This urgency is surprising given that other laws, such as the Oil and Gas Law, the Salary Scale Law and the Citizenship Law, have been pending in Parliament for years without resolution. This raises the question: Is the push to amend the law driven by social or political necessity, or is it a strategy by certain parliamentary blocs to garner voter support for upcoming elections? The insistence on passing the law now appears to be motivated by both sectarian and political factors.

The Sectarian Motive

The ongoing dispute is rooted in the broader conflict over Shiite religious interests. In May, Muqtada al-Sadr became involved in a sectarian controversy regarding the designation of the Day of Ghadir as an [official holiday](#). His efforts succeeded, leading the Iraqi Parliament to approve this day as an official holiday throughout the country. However, the same legislative session did not address Republic Day, observed on July 14, leading some critics to view the move as an endorsement of sectarianism and a deviation from the principles of a civil national state. The Ghadir holiday has allowed Sadr to position himself as a Shiite leader committed to emphasizing sectarian interests within the broader Shiite community.

It appears that the CF is strategically employing sectarianism to compete with Sadr for Shiite support, driven by concerns about losing this key demographic in the upcoming elections. The CF also aims to strengthen ties with Shiite authorities that Sadr has recently engaged with.

The proposed sectarian laws, which seek to institutionalize the

Jafari school of law within personal status regulations, are intended to become both practical and legal norms that people and the courts will use. This would reassure clerics and jurists, aligning their perspectives with those of the CF. The move may also help to bridge the differences between the two parties and potentially smooth over other contentious issues, all in pursuit of their shared goal: the establishment and formalization of the “Jurisprudence of Ahl al-Bayt” (Household of the Prophet) through state institutions.

Here lies a paradox: the Shiite religious authority of Najaf does not endorse the concept of absolute jurist guardianship (*Wilayat al-Faqih*) during the age of occultation, instead supporting a limited form of guardianship tied to *hisbah* (non-litigant issues) and related matters. The Najaf religious authority advocates for a civil state according to its publicly stated theory. This raises the question of how Najaf jurists can support amendments to the Personal Status Law given these principles.

The answer lies in Najaf’s approach to such legal amendments. While the religious authority does not support absolute jurist rule, it views these amendments as outcomes of civil and legal processes managed by parliamentary institutions. This perspective holds that these changes reflect the people’s will, their doctrines and cultural values, rather than the imposition of an “imported” or foreign doctrine. According to Najaf jurists, these amendments are driven not by religious leaders but by the state and its civil institutions. Some jurists even criticized the 1959 Personal Status Law as being “legislated by atheists who do not believe in religion,” thus framing the proposed amendments as a corrective measure aligned with society’s values and religious views.

The Political Reason

This reason stems from the CF's awareness that its control over the legislative process, aimed at advancing laws and policies aligned with Iranian interests, is likely to be short-lived. With increasing speculation about early parliamentary elections and the Sadrist Movement's potential return to prominence, the CF is concerned about the difficulty of maintaining its influence in future parliamentary sessions. Additionally, the rise of civil forces born from the October protests, along with Sunni and Kurdish groups, further complicates its position. In response, the CF is making a concerted effort to secure Shiite votes and reinforce its standing among Shiite constituencies before the current parliamentary session concludes. It aims to maintain its relevance and bolster its relationship with religious authorities, positioning itself as a key rival to the Sadrist Movement, which poses a significant threat in the upcoming elections. To achieve this, the CF has intensified its religious and even sectarian rhetoric, appealing to Shiite voters and reinforcing its religious legitimacy. This strategy also aligns with Iranian interests, which favor laws and legislation reflecting religious principles and brings Iraq closer to the concept of Wilayat al-Faqih, reflecting a shared vision with Iran.

Rumors have circulated that Iraqi Shiite political factions are negotiating with Sunni forces to facilitate the passage of the Personal Status Law amendment in exchange for advancing the General Amnesty Law. This law is a key component of the agreement that led to the formation of the current government under Prime Minister Mohammad Shia' al-Sudani and has been a central demand of Sunni parties in Iraq for 20 years. Human rights organizations have reported that Iraqi authorities have

detained thousands of Sunnis without legal justification, often under the guise of counterterrorism efforts. Deborah Amos's notable book, "Eclipse of the Sunnis: Power, Exile, and Upheaval in the Middle East," details the plight of Sunnis following the US invasion of Iraq, including targeted violence from militias such as the Mahdi Army. Amos argues that establishing a secular, civil Iraq hinges on addressing Sunni political marginalization and the repatriation of Sunni refugees displaced by sectarian violence.

In contrast, the current ruling elite, represented by the CF, appears indifferent to these criticisms and resists integrating Sunnis into the national identity. Their preference seems to be for a sectarian state aligned with Tehran rather than a secular civil state. This stance raises concerns about potential future sectarian conflicts that could undermine regional stability and contribute to broader societal fragmentation in Iraq, affecting neighboring countries as well.

Regardless of whether abovementioned rumors about an agreement between Sunnis and Shiites hold water, the CF is actively working to secure Shiite voter support before the current parliamentary session ends. This effort aims to maintain its influence within Shiite constituencies, strengthen its ties with the religious seminary and compete effectively against the Sadrist Movement, which poses a significant challenge in the upcoming elections. Therefore, the proposed Draft Law Amending Personal Status Law is seen as part of the CF's attempt to intensify its religious and even sectarian rhetoric to bolster its position and enhance its religious legitimacy. Additionally, an Islamic Iraq serves Iran's interests which seeks to keep Baghdad under the dominance of Wilayat al-Faqih.

The Legal and Constitutional Debate Over the Amendments

Iraqis are divided on the constitutionality and legality of the proposed amendments to the Personal Status Law. One group argues that the amendments are constitutional and in alignment with legal norms, while another group contends that these are constitutionally flawed and problematic.

The Constitutionality of the Amendments

Supporters of amending the Personal Status Law rely on Article 41 of the Iraqi Constitution, which states that Iraqis are “free to adhere to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.” Therefore, they believe that this article gives the right to every religious or sectarian group to resort to its belief in matters of personal status. The legal adaptation of this is to establish a Sunni and Shiite jurisprudential code through the Sunni and Shiite endowments alongside the existing positive code. These codes would be a reference for the judge when issuing a ruling, and both the man and the woman would also decide this when concluding a marriage contract, i.e. the reference they would resort to in the event of separation. Supporters also say that the CF and the parliamentary majority have the right to legislate whatever laws they see fit, considering themselves a majority in accordance with democratic rules.

The Constitutional Flaw

Opponents from the civil movement object to the proposed amendments to the Personal Status Law for several key reasons. They argue that the amendments would enshrine sectarianism

and permit the marriage of minors. Critics believe that adapting a general law to sectarian and religious jurisprudential interpretations could institutionalize [sectarian divisions](#) within society, reinforcing religious laws that disproportionately disadvantage women. Additionally, they contend that the amendments could undermine the authority of judges, elevating religious and legal authorities and marriage officials (*mazoun*) above the judiciary, which contradicts constitutional principles regarding judicial independence. Opponents also assert that these changes threaten the foundational principles of the civil state upheld by the Iraqi Constitution.

Critics of the proposed amendments argue that such changes would transform Iraq into a sectarian state and represent a regression from the principles of a national civil state. They cite several legal issues with the amendments. First, the proposal grants religious authorities and jurists, rather than judges, the authority to handle divorces involving missing persons, undermining judicial oversight. Second, it permits the marriage of girls as young as nine. Third, it denies women inheritance rights in certain assets, such as real estate and land. Fourth, it strips mothers of custody rights. Fifth, in cases of disputes between sects or religious authorities, the amendments could lead to unfair outcomes for one party.

Significations and Implications of These Proposed Amendments

The controversy surrounding the amendments to the Personal Status Law in Iraq underscores critical implications for the nation's identity and future. This issue reflects the broader struggle between two primary currents in Iraqi society.

The first current is sectarian, advocating for a Shiite-centric Iraqi state, and is represented by the CF, which is supported by Iran.

This group wields significant power and influence, enabling it to shape Iraqi legislation to align with its sectarian goals.

The second current supports a national and independent vision for the state, represented by civil forces that seek to establish a more inclusive Iraq. This current, however, is comparatively weaker, lacking the power and influence of the CF. The following include the most salient significations and implications of the issue:

The Danger Posed by the CF's Control Over the Iraqi Parliament

Iraq operates under a parliamentary political system, granting the parliamentary majority the authority to appoint the prime minister and form the government. Following the withdrawal of the Sadrist Movement's representatives from the Iraqi Parliament, the CF — backed by Iran — emerged as the largest parliamentary bloc. This majority status enables it to influence the passage or obstruction of legislation. This scenario poses a significant risk within the parliamentary system, as it allows the CF to pursue its objective of transforming Iraq's national identity into a Shiite sectarian one. This shift threatens to undermine the civil identity of the Iraqi state. The danger is further compounded by the approval of various laws aimed at entrenching a Shiite and sectarian identity since the CF became the dominant parliamentary force.

A Further Step Toward Consolidating Shiite Identity in Iraq

The draft law amending the Personal Status Law is part of a broader trend of sectarian legislation in the Iraqi Parliament aimed at reinforcing a Shiite identity for the Iraqi state since the CF assumed control. This trend includes the Parliament's

previous decision to recognize the Day of Ghadir as an official national holiday, which falls on the 18th of Dhu al-Hijjah. This move, driven by Muqtada al-Sadr, is seen as promoting a Shiite narrative at the expense of other sects and ethnicities in Iraq. The decision has exacerbated tensions among different groups, with Sunni factions calling for the recognition of the anniversary of the Saqifah of Bani Sa'idah as an official holiday, and Kurdish and Turkmen groups demanding official holidays to commemorate significant events in their histories.

Decoding Another of the Iraqi Political System's Mysteries

The issue underscores a fundamental flaw within the Iraqi system since the Shiites assumed power in 2003: the ruling Shiite faction lacks a comprehensive national agenda that serves the diverse interests of all segments of Iraqi society. Instead, it has focused on sectarian and doctrinal programs that primarily benefit the Shiite community and align with Iranian expansionist objectives. This sectarian approach has led to a deviation from essential principles that underpin successful political systems, which are meant to prioritize national interests, collective security, and a unifying national identity. By prioritizing sectarian and Iranian political goals, the Iraqi leadership has undermined its ability to propose effective solutions to Iraq's broader crises. As a result, the Iraqi leadership has become mired in its own problems, unable to effectively address the needs and concerns of the entire nation.

Increased Chances of Sectarian Strife

Imposing a Shiite identity through amendments to sectarian and denominational laws in a multi-sectarian and multi-ethnic society like Iraq risks entrenching Shiite dominance and marginalizing Sunni and Kurdish factions. This approach could ex-

acerbate existing tensions and resentment among these groups, increasing the likelihood of sectarian conflicts. Historically, such conflicts have led to significant destruction, resource depletion and severe political, economic, security and social crises. The risk of escalating sectarian violence is particularly high in Iraq's current unstable environment, marked by widespread internal crises and the involvement of pro-Iran militias in regional conflicts, including attacks on US targets within Iraq.

Conclusion: Prospects for Parliamentary Approval

Despite significant opposition from various Iraqi groups, the likely scenario points to the Iraqi Parliament ultimately voting to approve the amendments to the Personal Status Law. Several factors contribute to this outcome. Firstly, the CF, the largest parliamentary bloc, supports the amendments, which gives it the legislative power to pass the law. Secondly, there is indirect backing from the Najaf religious authority, as clerics and jurists associated with it have expressed support for the amendments. This support aligns with the traditional seminary view, where personal status issues are central and non-negotiable, reflecting the core of contemporary jurisprudential discourse and maintaining the spiritual authority of clerics over their followers. Thirdly, the Parliament has a history of passing similar legislation aimed at solidifying a Shiite identity, such as the Ghadir Day Law.

The aforementioned reveals a firmly rooted strategy among Iraqi Shiite politicians, where sectarian priorities take precedence over other considerations in both domestic and foreign policy. When faced with challenges to sectarian interests, Shiite alliances often retreat to a sectarian stance, disregarding principles of a civil state and collective identity. This raises a pertinent

question: Are the ongoing efforts to establish a Shiite identity in Iraq, under the dominance of the CF in Parliament, indicative of Iran's broader project in Iraq moving toward creating a system similar to Wilayat al-Faqih? After all, Iran has already succeeded in imposing political, military and Shiite dominance over Iraq's institutions. Finally, it is likely that allowing one faction to dominate the Iraqi political arena and unilaterally implement its vision, without inclusive community participation or political pluralism, would lead to the successful passage of laws that promote an exclusively Shiite identity in Iraq. A lack of political competition in future elections will likely enable further advances in establishing this identity, raising the risks and costs associated with confronting the Iranian project, which has already proven to be significantly influential in Iraq.

