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Sectarian Personal Status Law Reform in Iraq: Context, Changes, and Implications for Women's Rights

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Abstract

Iraq's Personal Status Law No. 188 of 1959 has long provided a unified civil framework for family law across sects, widely regarded as one of the more progressive in the Middle East. Recent legal developments, however, have fundamentally altered this framework. In late 2024, the Iraqi parliament approved a controversial amendment to the Personal Status Law that allows sect-specific personal status codes – notably a Jaafari (Shia) law option – to operate alongside the national lawhrw.orgthemedialine.org. This paper examines the context and content of these reforms and analyzes their implications. The discussion outlines the historical significance of Iraq's 1959 Personal Status Law, the constitutional and political backdrop (including Article 41 of the 2005 Constitution), and prior attempts to introduce sectarian family laws. It then details the key provisions of the 2024–2025 amendments, such as the option for Shia Muslim couples to choose a Jaafari law for marriage and divorce, and the resulting differences in areas like child marriage, polygamy, divorce, custody, and inheritance. The paper evaluates the impact of these changes on women's and girls' rights in Iraq, assessing potential conflicts with the Iraqi Constitution's guarantees of equality and with Iraq's international human rights obligations. Reactions from legal experts, civil society, and women's rights organizations are presented to highlight the contentious nature of the reform. Overall, the new sectarian personal status framework – while framed as respecting religious freedom – risks undermining legal equality, national unity, and hard-won protections for women and children under the previous unified law. Recommendations are offered for addressing these challenges, emphasizing the need for safeguards to ensure that women's rights and constitutional principles are upheld in Iraq's evolving legal landscape.

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Introduction

Iraq's legal system has historically balanced civil law with Islamic principles, particularly in the realm of personal status (family law). The Personal Status Law No. 188 of 1959 ("PSL 1959") unified Iraq's diverse religious communities under one set of laws governing marriage, divorce, child custody, inheritance, and related matterswilsoncenter.org. This law, enacted shortly after the 1958 revolution, was

revolutionary for its time: it *abolished sect-specific rules in favor of a singular national code* that drew from multiple Islamic jurisprudential traditions while also advancing women's rights (for example, setting a minimum marriage age and restricting polygamy)wilsoncenter.orgwilsoncenter.org. The PSL 1959 has since been lauded as one of the Middle East's most progressive family laws, as it *"unified all segments of society under a singular code while being considerate of both Islamic principles across sects and the human rights of women and children"*wilsoncenter.org. For decades, it provided a common legal identity for Iraqis irrespective of sect, fostering national integration and relatively greater gender equality in personal status matters.

Despite its longevity, the unified personal status law has faced challenges from Islamist factions and conservative leaders who argue that it does not sufficiently adhere to specific sectarian interpretations of Sharia (Islamic law)themedialine.orgthemedialine.org. The Iraqi Constitution of 2005 intensified this debate by including Article 41, which guarantees Iraqis freedom in their personal status affairs according to their religion or belief, "to be regulated by law." This provision opened the door for those who advocate that each sect should be able to apply its own religious law in personal mattersmoj.gov.iqmoj.gov.iq. Women's rights groups and secular advocates have long feared that implementing Article 41 would fragment the legal system and roll back women's rights; indeed, since 2005, **there have been multiple attempts to amend or replace the PSL 1959 with sect-specific laws**brookings.eduamnesty.org. Prior efforts – notably in **2014** and **2017** – to introduce a Shia-specific "Jaafari Personal Status Law" sparked public outcry and were shelved amid strong civil society oppositionbrookings.eduamnesty.org. Those proposals would have drastically lowered the marriage age and imposed stricter religious rules, leading to mass protests (especially by women's organizations) and condemnation that such changes would *"undermine women's rights"*brookings.edubrookings.edu.

In 2024, the push for sectarian personal status law was revived with greater momentum. The governing coalition, dominated by conservative Shia parties, reintroduced amendments to the Personal Status Law that would effectively permit **two parallel legal regimes**: the existing civil law (largely derived from Sunni and mixed jurisprudence) and a new Jaafari law aligned with Twelver Shia jurisprudencethemedialine.orgthemedialine.org. After months of contentious debate and revisions, an amendment was passed by Parliament and entered into force on 17 February 2025hrw.org. This amendment, **Law No. 1 of 2025**, grants Muslim couples the option upon marriage to choose which law will govern their family matters – either the original PSL 1959 or a forthcoming Sharia-based code specific to their sect (initially, a Jaafari code for Shia Muslims)hrw.orgthemedialine.org. If the Jaafari option is selected, all subsequent issues of marriage, divorce, custody, and inheritance for that couple will be decided per Shia Jaafari jurisprudence, and that choice is irrevocablehrw.orgthemedialine.org.

These changes represent one of the most significant shifts in Iraqi law in recent years, raising **pressing legal questions**: How do the new provisions align with Iraq's constitutional guarantees of equality and unity? What are the implications for women's rights, given the differing rules of Jaafari jurisprudence on matters like child marriage, polygamy, and custody? And how might this affect Iraq's obligations under international law, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)? This paper explores these questions, providing a detailed overview of the reforms and an analysis of their potential impact on Iraqi society and the legal system. The discussion draws on Iraqi legal sources, the text of the amendment, and commentary from human rights organizations and legal experts to present a comprehensive picture of this contemporary development in Iraqi law.

Background: Iraq's Personal Status Law and Constitutional Framework

Personal Status Law No. 188 of 1959 – enacted during Iraq's secular republican era – has governed family law matters for all Iraqis (Muslims and non-Muslims alike, with limited exceptions) for over six decades. Key features of the 1959 law includedwilsoncenter.orgwilsoncenter.org:

- A **unified court system** for personal status cases, with civil courts applying the PSL rather than religious courts for each sect. This ensured one legal forum and prevented forum-shopping based on sect.
- A **minimum marriage age** of 18 for both males and females (with a judge's permission required for those between 15 and 18 in exceptional cases)hrw.org. Child marriages under 15 were thus generally prohibited in law, a progressive stance compared to some neighboring countries.
- **Restrictions on polygamy** – while Islamic law permits a man to have up to four wives, the PSL 1959 made polygamy conditional on a judge's approval. Article 3 of the PSL stipulates that a judge must verify a legitimate interest and the financial ability of the husband before authorizing a polygamous marriagehrw.org. Effectively, this introduced practical barriers to polygamy, and first wives' objections could influence the judge's decision.
- Enhanced **divorce and custody rights for women** compared to strict interpretations of Sharia. For instance, women have rights to petition for divorce under certain conditions, and mothers were often granted custody of young children with the child's best interest considered (the PSL set custodial age limits, often up to around age 10 for sons and older for daughters, subject to judicial discretion)wilsoncenter.org.
- Requirements that **all marriages be officially registered in court**, with unregistered religious marriages considered illegal (and potentially penalized)wilsoncenter.org. This was aimed at preventing informal marriages, including temporary "pleasure" marriages or child marriages, and to ensure spousal rights and documentation.

This unified law was a cornerstone for women's status in Iraq. It balanced Islamic tenets with modern principles, and although not gender-equal in all respects (for example, inheritance rules continued to follow Qur'anic shares, generally giving females half the share of males in similar kin positions), it significantly improved upon what purely uncodified religious laws might offer. By **centralizing personal status in state law**, Iraq also fostered a sense of national identity over sectarian identity in family mattersamnesty.orgmoj.gov.iq.

The **Iraqi Constitution of 2005**, however, introduced new dynamics. On one hand, the Constitution guarantees equality to all citizens (Article 14 provides that *"Iraqis are equal before the law without discrimination based on gender, sect, religion, origin…"*hrw.orghrw.org). It also states in Article 13 that the Constitution is the supreme law, and any law that contradicts it is invalid. On the other hand, **Article 41** of the 2005 Constitution declares: *"Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law."*moj.gov.iq. This provision was fiercely debated during the constitution drafting – women's rights advocates warned it could be used to dissolve the unified personal status code and replace it with religious laws for each group. In fact, Article 41 was opposed by many women's groups who saw the existing PSL as a guarantor of women's rights and national unityamnesty.orgamnesty.org. Nonetheless, Article 41 remained in the final text of the Constitution, effectively mandating that a law be passed to implement freedom of personal status according to sectarian lines.

For many years after 2005, **successive Iraqi governments did not act on Article 41**, leaving the PSL 1959 in place. This inertia was due in part to the volatility of Iraqi politics and the recognition that changing personal status law was a "red line" for civil society and many Iraqis who valued its protections. However, Islamist-oriented parties (particularly Shia parties with ties to religious authorities) continued to view the PSL as too secular or as disproportionately reflecting Sunni jurisprudence. They argued that *"the 1959 Personal Status Law provisions were based on Sunni doctrine and that there should be a Shiite code"* to reflect the beliefs of Iraq's Shia majoritythemedialine.orgthemedialine.org. On the Sunni side, religious leaders were generally more content with the unified law (which indeed drew heavily from Sunni Hanafi and Maliki fiqh precedents), and some feared that reopening the law could lead to even more conservative outcomes or simply disrupt the status quothemedialine.orgmoj.gov.iq.

Two notable attempts to change the law occurred prior to 2024:

- **2014 Jaafari Law Proposal:** In late 2013 and early 2014, the Ministry of Justice (under Minister Hassan al-Shimmari of the Fadhila Party) drafted a *Jaafari Personal Status Law* that would apply to Shia Iraqis. This draft allowed girls as young as 9 to marry (reflecting an interpretation of Shia jurisprudence regarding maturity) and included provisions for **"temporary marriages" (mut'a)** among other rules. The proposal, unveiled around the time of International Women's Day 2014, was met with uproar. Protesters took to the streets – on March 8, 2014, women carried signs such as *"Women are not for sale or purchase"*brookings.edu. Domestically and internationally, the draft was condemned for violating women's and children's rights. Due to the backlash and the ISIS crisis that unfolded in mid-2014, the draft law never proceeded to a vote.
- **2017 Proposed Amendments:** In 2017, conservative lawmakers in Parliament proposed amendments to the existing Personal Status Law that would, among other things, allow religious sects more authority in personal status issues. This included potentially **allowing religious courts or sect-specific rules in certain cases**. News of a parliamentary committee approving such amendments in late 2017 again sparked protests and statements of concern. Like the 2014 attempt, the 2017 initiative stalled amid public pressure and the complexities of Iraqi coalition politicsamnesty.org. By early 2018, it was shelved, as elections and other issues took priority.

These attempts illustrate a pattern: **religiously conservative factions persisted in seeking to "Islamicize" personal status law, citing Article 41 and sectarian fairness, while opponents framed the unified law as essential for women's rights and social cohesion.** This tug-of-war set the stage for the 2024 developments.

The 2024–2025 Amendment: Legislative Process and Key Provisions

Parliamentary Approval of Sect-Based Personal Status Codes

After a period of dormancy on the issue, Iraq's Parliament revisited personal status reform in mid-2024. On **August 4, 2024**, a bill to amend Law 188/1959 had its **first reading** in Parliamentbrookings.edu. The draft amendments closely mirrored the previous sectarian proposals: they aimed to *"give Muslim citizens the option of selecting either the current, largely secular personal status law, or a religious law—depending on their sect—as the basis of all family law matters upon their marriage."*brookings.eduwilsoncenter.org In essence, rather than outright replacing the PSL with separate laws, the approach was to **amend the existing law to incorporate an elective sectarian system**. Under the draft, when a marriage contract is executed, the couple would declare whether they wish to be governed by the civil Personal Status Law or by a Sharia-based code corresponding to their sect. That choice would then apply to *"their marriage, divorce, children, and inheritance"* going forwardhrw.org.

The proposal immediately generated **controversy and mobilization**. Women members of parliament, civil society groups, and human rights organizations warned that the changes would be gravely damaging to women's equality and could even permit practices like child marriage that are banned under current lawamnesty.orgamnesty.org. The **Iraqi Women's Network** and a coalition of NGOs – informally called the *"188 Alliance"* in reference to preserving Law 188 – launched awareness campaigns and lobbied lawmakers to reject the amendmentswilsoncenter.orgwilsoncenter.org. Notably, even some religious and tribal figures voiced opposition; a number of Sunni leaders objected to sectarian fragmentation of the law, and some Shia legal experts cautioned that creating separate systems could undermine national unitywilsoncenter.orgwilsoncenter.org.

In **September 2024**, the battle intensified during the bill's second reading. On September 3, 2024, opponents in Parliament attempted a **boycott to deny quorum**, temporarily delaying the readingamnesty.org. Nevertheless, the **second reading was completed on September 16, 2024**, amid heated debate. Women MPs decried that their recommendations had been ignored and that no revised draft had been shared before rushing to the second readingamnesty.org. Despite the pushback, the

parliamentary majority supporting the amendment – largely consisting of the Shia Islamist parties within the governing *Coordination Framework* bloc – pressed forward.

A noteworthy event occurred on **September 17, 2024**, when the **Federal Supreme Court of Iraq weighed in**. The Court issued a ruling that the proposed amendments *"were aligned with Iraq's constitution"*, effectively pre-empting any constitutional challenge to the law on grounds of violating Article 14 or other provisionsamnesty.org. This decision cited the constitutional basis of Article 41 (personal status freedom) to affirm that allowing sect-based laws was within the legislature's authority. Many legal scholars found this timing peculiar – the Court opined on a bill not yet passed, which some interpreted as the judiciary taking a proactive stance to legitimize the controversial reform. Critics argued the ruling *"appeared to exceed the Court's proper role"*, as it intervened in an ongoing legislative matterpapers.ssrn.com. Regardless, the Court's blessing removed a key argument of opponents (unconstitutionality), clearing the path for the amendment's passage.

By the end of 2024, the **Personal Status Law Amendment** was approved by Parliament. It was promulgated as **Law No. 1 of 2025**, published in the Official Gazette on 17 February 2025hrw.org. The amendment's enactment followed **months of wrangling and some revisions** to address the loudest criticisms. Human Rights Watch notes that *"persistent pressure and advocacy by women's rights groups"* led to changes in the final text that **"partly reduced the amendment's harm"** – though in HRW's assessment, *"the amended law…contains other provisions that threaten women's and girls' rights."*hrw.orghrw.org

Key Provisions of the Amended Law

The amended law can be summarized as follows:

- **Option of Sectarian Law at Marriage:** Upon registering a marriage, a Muslim couple may choose either to remain under the **Personal Status Law of 1959** or to opt into a **Personal Status Code (mudawana) based on their Islamic sect**hrw.org. In practice, as of 2025 this means Shia couples can choose the Jaafari jurisprudence code, while Sunni couples would presumably continue under the existing PSL (Sunni representatives in Parliament insisted that the amendment *not* apply to Sunnis, so the law as passed is effectively directed at creating a Shia-specific option)moj.gov.iqmoj.gov.iq. If a couple's sect background differs, the mechanism is unclear, but presumably the PSL would apply unless one partner formally converts sect for the purpose of personal law – an issue that may spur further regulation. Once a choice is made in the marriage contract, **it is irrevocable**hrw.orgthemedialine.org; the spouses cannot later switch to the other system, even in the event of divorce and remarriage to someone else.
- **Establishment of a Jaafari Personal Status Code:** The law mandated the creation of a comprehensive Sharia-based family law code adhering to the Twelver Jaafari (Shia) school. A council of Shia jurists and legal experts – the **Shia Waqf (Endowment) Scholarly Council**, in coordination with the Ministry of Justice and State Council – was charged with drafting this code within six monthsamnesty.orgmoj.gov.iq. By August 2025, a **new Jaafari code of over 300 articles** was finalized and approved by Parliament as an annex or supplement to the Personal Status Lawthemedialine.org. According to media reports, this Jaafari Code addresses *"marriage, divorce, inheritance, alimony, custody and wills in line with Twelver Shiite jurisprudence"*themedialine.org. It does not replace the existing law but stands alongside it as an alternative **legal regime** for those who choose it.
- **Unified Courts with Sect-Specific Application:** One concern was how the judiciary would handle two parallel systems. The amendment provides that the **same personal status courts (civil family courts)** will continue to adjudicate cases, but judges will apply the rules of the chosen code to the case at handmoj.gov.iqmoj.gov.iq. Judges may need training in Jaafari jurisprudence; the law allows for consultation with Sharia experts when applying the sect codemoj.gov.iq. Importantly, this mechanism preserves the court system as a state venue (unlike in Lebanon, for example, where

separate religious courts exist). Thus, Iraq sought to avoid fragmenting the judiciary, even as the *substantive law* it applies will differ by litigant.

- **Limitation to Muslims:** The sectarian choice is explicitly limited to **Muslim citizens**. Non-Muslim minorities (Christians, Yezidis, Mandaeans, etc.) continue to have their own religious courts or laws for personal status, as was already the case before (the PSL 1959 had limited applicability to non-Muslims, allowing their religious laws in certain matters). The new amendment primarily affects the Muslim majority, splitting them by sect for personal law purposesmoj.gov.iqmoj.gov.iq.
- **Retention of Certain Safeguards:** In response to backlash, the final amended law included clauses to **retain some of the PSL's protections** even within the new sectarian system:

- ✓ The **minimum age of marriage** under any new sectarian code *"cannot contravene the Personal Status Law"*hrw.org. In other words, the Jaafari code cannot set an age lower than what PSL allows. The PSL sets 18 as the standard minimum, with an absolute floor of 15 in exceptional cases with judicial consenthrw.org. This provision was a direct reaction to fears that the Jaafari law would legalize marriage at puberty (potentially as young as 9 for girls). **As a result, the worst-case scenario of girls as young as 9 being married legally was averted in the text of the law**hrw.orghrw.org. However, critics note that even at 15 (with a judge's approval), Iraq's law would still fall short of international standards, which recommend **18 as a minimum age with no exceptions**.
- ✓ The amendment specifies that any sect-based code must not include anything contrary to "the best interests of the child" in custody mattershrw.org. It guarantees that a non-custodial parent (typically the father in cases where young children stay with the mother) retains the **right to meet and communicate with his children** in a reasonable mannerhrw.org. These clauses appear aimed at tempering concerns that, for example, a Jaafari rule might automatically grant custody to fathers at a very early age of the child. While **vague**, the "best interests" language might empower judges to reject a strictly literal application of an Islamic rule if it clearly harms the child.
- ✓ The final text also **kept the PSL's restrictions on polygamy** intact for the time being. It states that any new code shall not remove the requirement of a judge's consent for a man to take an additional wifehrw.org. Early drafts implied that the Jaafari code might permit polygamy without a prior court authorization or first wife's consent. By retaining Article 3 of PSL in effect, polygamy is still *nominally regulated* (though as discussed later, the Jaafari interpretation of what constitutes a "legitimate interest" may be more permissive, effectively easing polygamy in practice despite the formal requirement)themedialine.orgthemedialine.org.
- ✓ An initial proposal that in case of spousal disagreement the **husband's choice of law prevails** was removed in the final law. Instead, if a couple cannot agree at the time of marriage which law to follow (an unusual scenario since presumably they should settle it before marrying), a **judge will determine** which regime serves the "best interest of both parties"hrw.org. Earlier versions favoring the husband's preference were criticized as blatant discrimination in violation of equal rightshrw.org. The change to a judicial determination was seen as a minor improvement, albeit the law still places women at a disadvantage by forcing a choice within a constrained set of patriarchal legal systems.

Despite these adjustments, **major concerns remain**, as detailed in the next section. It is important to note that as of mid-2025, the Jaafari code has been formally adopted (with Parliament voting on the compiled Jaafari rules on August 27, 2025)themedialine.org. The Federal Supreme Court again validated the procedure of that vote shortly thereafterthemedialine.org. Iraq thus now effectively maintains **two parallel personal status regimes** for its Muslim population: the original 1959 civil code (still in force, and automatically applicable to Sunnis and any others who do not choose otherwise) and the new Jaafari Sharia-based code for those Shia who opt into itthemedialine.orgthemedialine.org. This development makes Iraq unique in the region; it is a departure from the previous uniform civil law model, and unlike countries that have entirely separate religious court systems, Iraq attempts to manage the difference within one court system.

Implications of the Reform for Women's Rights and Equality

The introduction of sect-specific personal status rules in Iraq has far-reaching implications, particularly for **women's and girls' rights**. While proponents argue it allows Shia Iraqis to live under laws reflecting their religious convictions, opponents see it as a significant regression in terms of gender equality and legal unity. This section analyzes the expected impact in several key areas:

1. Child Marriage and Minimum Age

Perhaps the most alarming feature of the original draft amendment was the potential **legalization of child marriage**. The Jaafari jurisprudence, which follows certain classical interpretations, considers the age of nine (post-puberty) as eligible for girls to marry. Early proposals in 2024 appeared to *"eliminate the current legal marriage age of 18 for both girls and boys, paving the way for child marriages"*, according to Amnesty International's assessmentamnesty.orgamnesty.org. This prompted urgent warnings that the amendment *"could allow for girls as young as nine to be married"*, a clear violation of children's rightsamnesty.orgamnesty.org.

Due to local and international pressure, the final law as passed in 2025 explicitly maintained that the new sectarian code must respect the PSL's age limitshrw.org. **Thus, on paper, the minimum age remains 18 (or 15 with judicial consent) even for those under Jaafari law**hrw.org. Human Rights Watch noted this as an *"important revision"* that *"alleviates concerns that the amendment would have sanctioned marriages of girls as young as 9"*, though they underscore that permitting any exceptions below 18 still *"contravenes the international legal standard"*hrw.orghrw.org.

Despite this safeguard, observers worry about enforcement and indirect effects:

- The amendment also aimed to **legalize unregistered marriages** by removing penalties on religious marriages outside the courtamnesty.org. Under the PSL 1959, a marriage not performed before a judge is illegal (which disincentivizes clerics from performing child marriages or secret marriages). The new law *"would open the door to legalizing unregistered marriages…often used to circumvent child marriage laws, and [remove] penalties for adult men who enter such marriages and clerics who conduct them."*amnesty.orgamnesty.org. This effectively means that even if the letter of the law sets 15 as a hard minimum, *unofficial religious marriages to underage girls might proliferate with impunity*, as the deterrent is lifted. Activists fear a rise in child brides through "nikah" ceremonies that are later formalized when the girl reaches 15 or 18.
- **Child marriage is already a serious problem in Iraq**, even under the current law. UNICEF has reported that *28% of girls in Iraq are married before the age of 18*hrw.org. Many of these are likely informal marriages or done with judicial exceptions. Early marriage has well-documented harmful consequences: it *puts girls at increased risk of sexual and physical abuse, serious health risks from early pregnancy, and often ends their education*hrw.orgamnesty.org. By signalling a relaxation through sectarian law, Iraq may see higher rates of under-15 marriages that were previously kept in check. Essentially, *the reform risks normalizing what was considered a crime*, if religious officiants know they will not be prosecuted.
- In the longer term, once the Jaafari code is in use, pressure may mount to **formally lower the marriage age** for Shia followers. Conservative clerics could argue that since their religious law permits younger marriage, the law should be amended further to reflect that. The initial retention of 15/18 could be eroded by future amendments or simply by lax judicial enforcement (e.g. judges liberally granting permission for 15-year-olds or turning a blind eye to even younger cases until they are "caught up" at 15).

In summary, while the amendment in its final form prevented the immediate worst-case scenario of legalizing marriages of nine-year-old girlshrw.orghrw.org, it still constitutes a potential step backwards in combatting child marriage. The removal of penalties for unauthorized marriages *weakens protections*, and the existence of a sectarian legal avenue may embolden those who wish to marry off daughters at

very young ages. This directly conflicts with Iraq's obligations under the **Convention on the Rights of the Child (CRC)**, which requires protection against child marriage, and CEDAW's call for a minimum marriage age of 18.

2. Polygamy and Marital Rights

Under the unified 1959 law, polygamy was technically allowed but tightly controlled: a man needed a court's approval to take another wife, and he had to prove to the judge that he could provide for multiple wives and had a valid reasonhrw.org. While far from a blanket ban, this requirement (and the social change over decades) meant polygamy became less common in Iraq compared to some other countries.

The **Jaafari Personal Status Code** is expected to handle polygamy in line with traditional Shia jurisprudence, which does not require the first wife's consent and generally allows polygamy as a male right (up to four wives) without needing a court to establish a "legitimate interest." Reports indicate that the new code *"abolished the first wife's consent requirement for polygamy"* and even removed some of the PSL's conditionalitythemedialine.org. By contrast, Sunni practice under PSL is seen as a bit more equitable due to the judicial oversight. The Media Line notes *"There are now two codes: one Sunni, considered the most equitable for women, and the other Shiite, considered restrictive"* on issues like polygamythemedialine.orgthemedialine.org.

However, because the amendment's final text stated that existing provisions on polygamy remain, there is a **legal ambiguity**. It might be interpreted that a judge's permission is still formally needed even for Jaafari marriageshrw.org, yet if a judge is applying Jaafari principles, he might grant permission routinely. Also, by **removing the first wife's legal say** (if indeed the Jaafari code does so), the dynamics shift decidedly against women. In effect, a Shia man might more easily take another wife, and the first wife's recourse would be limited (under PSL, if a husband took a second wife without permission, the first wife could seek a divorce with full financial rights; this safeguard might vanish under Jaafari rules).

Another area is **temporary marriages (mut'a or "pleasure marriages")**, which are a Shia-specific concept. Such marriages are for a fixed term and automatically dissolve – they are not recognized in Sunni law and were illegal under the PSL's requirement of court marriage. The Wilson Center analysis flagged that *"the proposed amendment also risks legalizing 'pleasure marriages' (zawaj al-mut'a), or temporary marriage contracts conducted by religious clerics"*wilsoncenter.orgwilsoncenter.org. Mut'a marriages allow a man to enter into a marriage contract with a woman for a duration that can be as short as a few hours, often in exchange for a sum of money to the woman. **Currently illegal** yet reportedly *"widespread in Shia communities"* (performed clandestinely by some clerics)wilsoncenter.org, such arrangements essentially provide religious cover for sexual relations outside formal marriage. By legitimizing religious marriages outside the court, the new law indirectly permits mut'a. Women's rights activists are deeply concerned that poor women and widows may be *driven by economic need into serial temporary marriages*, which blur the line with prostitutionwilsoncenter.orgwilsoncenter.org. Indeed, Hiba Abdulwahhab writes that with structural legitimacy given to pleasure marriages, Iraq risks *"the virtual legalization of prostitution"* under the guise of religionwilsoncenter.orgwilsoncenter.org. This not only undermines the dignity of women but also creates legal uncertainties (temporary wives have practically no rights to support or inheritance, and any children born might face paternity issues).

In sum, the sectarian law reform likely increases **polygamous and temporary marriages**, which inherently disadvantage women. Women in polygamous unions are often at a financial and emotional disadvantage; dividing a husband's support among multiple households can lead to economic hardship and intra-family conflict. The PSL's attempt to regulate polygamy in the wife's interest is undercut by the Jaafari code eliminating consent and simplifying men's ability to take another wifethemedialine.org. This change contravenes the spirit of **CEDAW**, which Iraq ratified (with reservations) – CEDAW calls for the elimination of polygamy because it violates women's right to equality in marriage. The government's move thus faces criticism as entrenching discrimination. Amnesty International explicitly urged Parliament to *"focus on…urgent legal reforms…failing to criminalize marital rape and allowing*

*'honour' as a mitigating factor for killings, rather than pushing harmful amendments that, for example, would eliminate the marriage age of 18"*amnesty.org. In other words, instead of removing protections, Iraq should have been strengthening them (such as outlawing polygamy or marital rape), as many countries are doing.

3. Divorce, Custody, and Financial Rights

The shift to a sect-based system also affects **divorce procedures and post-divorce rights**. Under PSL 1959, women had certain guarantees: a divorced woman could stay in the marital home for a period (iddat period and in some cases beyond if she had custody of young children) and claim alimony/child support; custody arrangements were based on the child's welfare with a preference for the mother of young children; and if the mother remarried, PSL did not automatically strip her of custody in all cases – judges could decide depending on the child's interest.

In contrast, **Jaafari jurisprudence** has traditional rules that can be less favorable to mothers and ex-wives:

- As reported, the Jaafari code likely includes *"the removal of maternal custody upon remarriage"*themedialine.org. In classical Shia law, if a divorced woman remarries, she often loses custody of children from the prior marriage, who go to their father or paternal family. The Media Line confirms this is part of the new code – if a woman with children remarries, she forfeits custody of those children to the father or paternal relativesthemedialine.org. This creates a cruel dilemma for divorcees: stay single to keep your children, or remarry and lose them.
- The new code also removes *"a woman's right to custody and maintenance if she leaves the marital home"* without permissionthemedialine.org. Under many Islamic laws, a concept of "nushuz" (rebellion/disobedience) means if a wife leaves or refuses conjugal cohabitation, the husband can cease financial support. The PSL 1959 had certain **protections for women in abusive or untenable situations** – it did not explicitly authorize "house of obedience" practices and allowed women to petition for divorce on grounds like harm or discord, during which time they might still receive maintenance. By contrast, the Jaafari rules as described suggest that if a woman leaves, she loses rights immediately, which could trap women in abusive marriages for fear of losing all support.
- **Divorce rights** themselves may become more unequal. Under PSL, while men retained a unilateral divorce right (talaq), it had to be exercised before a judge, and women had the right to seek judicial divorce on various grounds (e.g., if the husband is absent, fails to provide, or inflicts harm). The Jaafari approach may allow more scope for extrajudicial unilateral divorces by men (for instance, pronouncing talaq outside court and later registering it). Women's ability to initiate divorce could be more limited, potentially requiring them to forfeit financial rights (khul' – divorce by mutual consent where she gives up her dowry – might become the main avenue for women).
- **Inheritance inequalities** may be exacerbated. While both Sunni and Shia laws discriminate against women in certain shares (e.g., sons inherit double a daughter's share), the differences between Jaafari and Sunni inheritance rules could create complexity. Jaafari law is more favorable to widows and daughters in some scenarios (for example, allowing grandchildren to inherit from a pre-deceased child, which Sunni law might block by closer agnates). However, it's unclear if the code maintained those differences; the Wilson Center piece suggests the amendment in general *"privileges men in inheritance"*wilsoncenter.org and likely keeps the discriminatory baseline that women get lesser shares than men in analogous positions. Either way, the existence of two systems means that two Iraqi women in similar family positions could end up with different inheritance outcomes based on sect – which violates the principle of equal treatment under law.

Women's financial security and autonomy will likely suffer under the new regime. By removing *"critical protections for divorced women, such as the right to remain in the marital home or receive financial support from the former husband"*amnesty.org, the amendment exposes divorced women to

homelessness and destitution. Under PSL, after divorce, a woman could often stay in the marital home during the custody period or until she received her financial entitlements. Now, especially under Jaafari rules, she may be expected to leave immediately and only get whatever deferred dower (mahr) and limited child support the religious law provides. Given that women's workforce participation in Iraq is relatively low, many women rely on these legal protections to survive post-divorce. Losing them increases the vulnerability of divorced women, potentially forcing them back to abusive marriages or into precarious situations.

The reforms also raise questions of **equality before the law**. Article 14 of the Iraqi Constitution enshrines equality for all Iraqishrw.orghrw.org. By creating separate rules for Shia and Sunni, the amendment arguably undermines this equality. Iraqi women are now not equal under the law: a Shia woman and a Sunni woman, in identical marital circumstances, have different legal rights and remedies. For example, a Shia woman who remarries loses custody of her child, whereas a Sunni woman under PSL might not automatically lose custody – this is a clear inequality purely on the basis of sect. Human Rights Watch remarked that this *"effectively establishes separate legal regimes with different rights accorded to different sects, undermining the right to legal equality for all Iraqis found in article 14 of the constitution"*hrw.orghrw.org. The counterargument, of course, is that each citizen has the "freedom" to choose their regime (per Article 41). But in reality, most individuals will follow their identity group's law by default or family pressure. Women in conservative Shia families may have no true choice – their circumstances will force them under the Jaafari code, thereby **depriving them of rights that their Sunni sisters or more secular sisters continue to enjoy**.

4. National Unity and Sectarian Division

Beyond individual rights, the new law has implications for Iraqi society's cohesion. Iraq's modern history has been marred by sectarian conflict; one of the achievements of the 1959 Personal Status Law was to reinforce a common civic identity, treating all Iraqis as equal in personal matters under one law. The amendments of 2024–25 introduce a formal sectarian split in the legal system for the first time in decades.

Some potential implications include:

- **Legal Fragmentation:** The unity of law is a hallmark of state sovereignty and equality. By having two different laws, Iraq is to some extent *"re-tribalizing" or "re-sectarianizing"* citizenship. The Amnesty International critique noted that the amendments *"would further entrench discrimination and could allow for girls as young as nine to be married"*amnesty.org. The mention of entrenching discrimination refers to solidifying divides – Sunni vs Shia will now have tangible legal differences in daily life. This may complicate inter-sect marriages (which law applies if a Shia marries a Sunni? The law did not clearly address that scenario – it could create disputes or pressure one party to convert).
- **Administrative and Judicial Burden:** Judges and lawyers must now be versed in two sets of rules. Mistakes or biases may occur. For instance, a Shia judge might be more inclined to apply Jaafari rules even in cases where parties did not opt in, or a Sunni judge might be uncomfortable applying Jaafari code in his court. Over time, there might be calls for **specialized Shia family courts** vs Sunni courts, which would deepen institutional sectarianism – a path Iraq had avoided under PSL.
- **Sectarian Politics:** The law's passage has been attributed to *"the influence of Shiite clerics in Iraq's parliament"*, according to media analysisthemedialine.org. It demonstrates the increasing sway of religious authorities (especially those aligned with Iran's theocratic outlook) over Iraqi legislation. This raises concerns about Iraq's direction: whether it is moving toward a more theocratic or sectarian-based legal order, at the expense of the civil, secular state model envisioned in earlier decades.
- **Impact on Minorities:** Although the law ostensibly only affects Muslims, it underscores a trend of legislating on religious lines. Other recent legislative efforts in Iraq, such as proposals to criminalize

content deemed contrary to Islam or to ban LGBTQ content, follow a similar conservative trajectory. Minority communities might fear that their rights could also be subject to majoritarian religious norms in the future. The personal status sectarian division does not directly impose anything on non-Muslims, but it signifies a *reduced commitment to a pluralistic legal system*. The European Parliament, in a resolution regarding Iraq, noted concern that *"drafting highly restrictive amendments to the Personal Status Law"* is part of a pattern undermining the rule of law and equal citizenshipeuroparl.europa.eu.

On the positive side (as argued by supporters), the law might **reduce informal forum shopping**. In the past, some Shia families, unhappy with PSL outcomes, would secretly go to clerics for rulings or simply not register marriages. Now, they have an official outlet for their traditions. Proponents claim this is *"respecting people's democratic choices and religious freedom"*, a point the Federal Supreme Court seemed to endorse. But whether that benefit outweighs the aforementioned downsides is highly debatable. In effect, Iraq has prioritized sectarian freedom over uniform rights.

Domestic and International Reactions

The enactment of the personal status amendments triggered strong reactions from domestic activists and international observers:

- **Iraqi Civil Society:** Women's rights groups in Iraq condemned the amendment as a betrayal. Sarah Sanbar, the Iraq researcher at Human Rights Watch, encapsulated this sentiment, stating *"It's deeply disheartening to see Iraqi leaders move the country backward rather than forward on women and girls' rights"*hrw.orgthemedialine.org. Iraqi NGOs emphasized that the improvements made (keeping the marriage age at 18, etc.) *only took the law "from terrible to just plain bad."*hrw.org They vow to continue advocacy, possibly pushing for the law's repeal or further modification. The *188 Alliance* and others are educating women on what the changes mean and may encourage couples to **stick with the PSL system** when marrying, as a form of quiet resistance.
- **Religious and Political Leaders:** Shia Islamist politicians hailed the law as a victory for religious authenticity and the Shia majority's rights. They argue it corrects an imbalance dating to 1959. However, interestingly, some high-ranking Shia clerics (including those in Najaf) were not overtly enthusiastic, perhaps wary of the political uses of sectarian law. Sunni politicians largely opposed the law for their community and succeeded in excluding Sunnis from itmoj.gov.iqmoj.gov.iq, but they did not have the numbers to block it entirely. The issue has added tension in Sunni-Shia political relations, with some Sunnis seeing it as another instance of sectarian majoritarianism.
- **International Human Rights Organizations:** Amnesty International and Human Rights Watch issued detailed statements urging Iraq to abandon or revise the amendments. Amnesty's October 2024 release implored *"Iraqi lawmakers must drop amendments…which would violate women and girls' rights"*amnesty.org, highlighting how it flies in the face of Iraq's commitments under **CEDAW and the Convention on the Rights of the Child**amnesty.org. HRW's March 2025 report acknowledged the few late improvements but maintained that the law *"violates women's and girls' rights to equality before the law and puts them at risk of other abuses."*hrw.orghrw.org These organizations have called for Iraq's international partners and UN mechanisms to press for the protection of women's rights in Iraq. In the **2025 U.S. State Department Human Rights Report on Iraq**, the failure to sufficiently protect women from child marriage and discrimination is likely to be flagged (indeed, earlier reports noted Iraq's lack of a domestic violence law and persistence of honor crime mitigationsecoi.netamnesty.org).
- **General Public:** Reaction among the broader Iraqi public has been mixed. Many Iraqis, especially in urban areas and among the educated classes, are opposed to the changes or indifferent at best – they worry about the erosion of a modern civil state. On the other hand, segments of the conservative rural population and some tribal communities may welcome the formal recognition of religious norms, as it validates practices they followed informally. Notably, women in Iraq are not monolithic: while a

large number fear the loss of rights, some deeply conservative women might see the sectarian law as in line with their values (though they are likely a minority among women).

It remains to be seen if any legal challenges will be mounted against the new law on constitutional grounds (despite the Supreme Court's prior pronouncement). There is also the question of **Iraq's treaty obligations** – activists might try to use international forums (such as reporting to the CEDAW Committee) to hold Iraq accountable. The CEDAW Committee has previously urged Iraq to *"withdraw Article 41 of the Constitution and unify personal status laws to ensure women's equality."* The new law is a step in the opposite direction, so it will certainly come under scrutiny in Iraq's next periodic review.

Conclusion and Recommendations

The 2024–2025 reform of Iraq's Personal Status Law marks a **pivotal moment in the country's legal evolution**, one that many fear could herald greater regression in the rights of women and the principle of equal citizenship. By allowing sectarian personal status codes to operate alongside the once-unified civil law, Iraq has introduced a form of legal pluralism that carries significant risks: undermining national legal unity, entrenching gender discrimination under the guise of religious freedom, and exposing women and girls to practices that modern law had constrained – such as child marriage, polygamy without safeguards, and loss of custody and support rights.

From a strictly legal perspective, the change implements **Article 41 of the Constitution** after years of dormancy, but arguably at the expense of violating other constitutional guarantees (like Article 14's equality clause)hrw.orghrw.org. The Federal Supreme Court's stance suggests that, in cases of conflict, it views the personal status freedom as paramount. This raises deeper questions about Iraq's constitutional hierarchy of values: the Constitution also declares Islam as the religion of the state and a basic source of legislation (Article 2) – provisions often cited by conservatives. However, Article 2 also stipulates that no law should contradict fundamental rights and freedoms. **Reconciling these will remain a challenge**. As it stands, the new personal status amendment seems to prioritize a particular interpretation of Islamic jurisprudence over the uniform protection of individual rights.

Given the complexity and sensitivity of this issue, what can be done moving forward?

- **Monitoring and Safeguards:** It is crucial that as the Jaafari code is implemented, the **Iraqi judiciary and government closely monitor its impact**. Any signs of abuse – such as a surge in child marriages or women being unfairly treated in custody disputes – should prompt corrective measures (e.g., issuing regulations that emphasize "best interest of the child" or setting stricter evidentiary standards for polygamy permissions). Judges should be trained to use the remaining protective clauses (like best interest of children, and reference to PSL where applicable) to mitigate harmful outcomes.
- **Empowering Women's Choices:** While the ideal of completely rolling back the law might be politically difficult in the short term, one approach is to empower women to **assert their preference for the civil PSL system** when they marry. For instance, public awareness campaigns can inform young couples – especially brides – that they have a right to insist on the PSL in the marriage contract. Civil society groups could assist by providing model marriage contracts or prenuptial agreements that guarantee application of PSL and waivers of certain rights (e.g., the wife can stipulate no polygamy or that the marriage will be monogamous, which under Islamic law can be a binding condition). These measures at the individual level could help some women avoid the more oppressive aspects of the Jaafari code.
- **Legal Challenges and Amendment:** The Iraqi Parliament, under pressure, could be moved to amend the law further. For example, it could **codify a minimum marriage age of 18 with no exceptions**, applicable to all, thereby meeting international standards (this would require amending PSL itself and overriding any religious allowance). It could also introduce a separate **Anti-Domestic Violence Law**, which Iraq still lacksecoi.net, to at least protect women in abusive marriages – something Amnesty pointed out as a neglected priorityamnesty.org. In the long term, a broader constitutional reform

might be considered to clarify the relationship between Article 41 and equality rights, but that is a challenging endeavor.

- **International Engagement:** The international community should continue to engage with Iraq on these issues through diplomatic and human rights channels. This includes the United Nations (UNAMI's human rights office in Iraq), which has in the past worked with Iraqi authorities on law reform, and treaty bodies like CEDAW. Constructive pressure and offering of technical legal assistance might help Iraq find a path to honor its heritage of a strong personal status law while respecting diversity. **Examples from other Muslim-majority countries** could be instructive – many countries have found ways to reform personal status laws in harmony with religious principles but also with gender equality (e.g., Morocco's 2004 family code improvements, or Tunisia's approach). Iraqi legislators could be encouraged to study these models rather than emulate more extreme ones.
- **Upholding One Judiciary for All:** It is essential that Iraq maintains a unified court system and does not devolve into separate religious courts. The current plan retains unified courtsmoj.gov.iq; this should be preserved to ensure oversight and the possibility of appeals in a single hierarchy. Mixed-sect panels or cross-training might be useful to prevent bias. Keeping one judiciary will also make it easier down the road to unify the laws again, should the political winds shift.

In conclusion, the amendment of Iraq's Personal Status Law reflects the ongoing struggle within Iraqi society and governance between civil, rights-oriented legal norms and conservative, sect-centric interpretations of law. **It is a contemporary development with deep historical roots and significant consequences for Iraq's future.** The changes have indeed chipped away at some hard-won protections for women. Yet, the strong response by Iraqi civil society and global observers also shows that the fight for women's rights and equality before the law in Iraq is far from over. Iraqi women's organizations have demonstrated their ability to influence the legislative process (as seen in the improvements to the final text)hrw.orghrw.org. Their continued vigilance, along with support from legal scholars and human rights advocates, will be key in ensuring that this *"step backward"*themedialine.org does not become a permanent defeat, but rather a staging point for renewed efforts to advance legal equality in Iraq.

Ultimately, the true test of these reforms will be in their implementation: whether Iraq can manage a dual system without exacerbating inequality and whether the promise of "freedom of personal status" can coexist with the constitutional promise of equal rights for all citizens. The balance between respecting religious identity and upholding universal human rights is a delicate one. The hope among many Iraqis is that future reforms will strive to restore unity and fairness in the personal status sphere – reaffirming that *women's rights are an integral part of Iraq's legal order, not a bargaining chip in sectarian politics.*

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