

Iraq: In Need of a Force of Change

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Brief Analysis

In Iraq, there are several significant laws applied by the federal and local governments, despite not originating in Parliament, which is the highest political and legislative institution in the country. Some of those laws are pertinent to fundamental individual freedoms, while others are ideologically oriented; a good example is the “Holiness of the Ka'aba” law, enacted in February 2017, which prevents non-veiled women from entering the city. In reality, the veil is being imposed on women in most Iraqi cities without any legal reference. Thus, it is clear that the social reality produced by political pressure has been interpreted into laws, while laws related to freedom of expression, freedom of the press, and women’s protections remain tied to a formal process.

In recent years, based on laws not enacted by Parliament and precedent from Prime Minister Nuri al-Maliki’s actions in 2012, Iraq’s security forces and police started to raid cultural and social clubs, including Al-Mashriq, a Christian-owned club located in Baghdad city center. The Islamic Supreme Council of Iraq agreed with these measures against clubs and considered them to be in compliance with the Iraqi constitution.

Al-Ittihad newspaper reported in its September 9, 2012 issue that al-Maliki had met with prominent clerics in Iran in the margins of the Summit of the Non-Aligned Movement. Those clerics, led by the Marja’ Mahmoud Shahroudi, reportedly resented the widespread presence of nightclubs in Baghdad and other cities.

More recently, on October 22, 2016 the Iraqi parliament voted on a resolution to ban the import, manufacture, and sale of alcoholic beverages. By the end of the parliamentary session, the draft law was ready for review and approval by the majority of MPs, with immediate implementation. The approval of this law reveals what the ruling Shiite elite wants the state to look like in Iraq. Furthermore, the quick passage of this law could open the door for voting and approval of other laws proposed by Shiite parliamentary blocs. It would not be surprising if a law placing the Federal Court under the authority of clerics or Islamic jurists came next.

A proposed law to change the internal structure of the Federal Court was included on Parliament's 2013 agenda by the Shiite blocs, to be approved by general vote. Article 92 of Iraq’s permanent constitution on the role of Islamic jurists states, “the Federal Supreme Court shall be made up of a number of judges, experts in Islamic jurisprudence, and legal scholars, whose number and method of selection, and the work of the Court shall be determined by a law enacted by a majority of the members of the Council of Representatives.” According to this the law does not consider jurists members of the court but rather advisors whose role is to give advice without contributing to the decision-

making process. The draft essentially provided for modifying the advisory capacity of Islamic jurists to a legal one with the right to veto any resolution that does not comply with its vision for the state and society. This is, in short, the “governance of jurists”.

In this context, the parliament’s Shiite blocs have been attempting to revive a draft law that has been lying in the jurists’ drawers: the Ja’fari, the Shiite sharia law. When this law was announced by the Ministry of Justice and chosen as a title for the International Women’s Day ceremony on March 8, 2014, Justice Minister Hasan Halbous Hamza al-Shamari declared, “the Ja’fari Personal Status Law does justice to women by giving them the unprecedented privileges of lowering the age of puberty and inheritance to nine years old and declaring daughters the sole legitimate heiresses of their fathers in case of death. This law relieves women of the oppression and injustice that they have been subjected to in the past decades by secular laws and outdated social traditions”.

Ja’fari law permits and encourages child marriages for girls as young as nine years old. It prohibits inter-sect civil marriage or impedes and makes it temporary at best. Legislators justify the adoption of the Ja’fari law with Article 41 of the 2005 Iraqi constitution: “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.”

This article of the constitution can be construed to put matters of personal status in the hands of clergymen; the judge becomes an interpreter of the constitutional text and not a legal authority. In addition, the Ja’fari law causes confusion to citizens because it gives them the choice either to go straight to courts governed by different confessional authorities or to resort to clergymen prior to approaching the courts.

If the Ja’fari law is passed and approved in Parliament, it could encourage Iraq’s sects to enact their own laws, cause chaos in legislation, and divide Iraqi society into warring sectarian micro-states. In the historical context of laws on personal status, it is worth noting that the first civil law in Iraq was issued in 1959 (No. 188) and was considered a progressive law at the time because it addressed the rights of men and women, marriage, heritage, and other issues according to a single legal authority. Iraqi legislators at the time were inspired by the school of Imam Abu Haifa al-Numan and the doctrine of Imam Abu Ja’far al-Sadiq. The law included principles drawn from other sects and governed all the Muslims of Iraq by specific family and marriage standards. The law also treated men and women equally when it set the age of marriage at 18.

But through these new religious laws, some of which have been passed as others await approval, Iraq is becoming a model tailored to the needs of a ruling elite that measures policies based on narrow sectarian interests. They exhibit little consideration for the religious, cultural, or social interests of the other sects and confessions that have distinguished the country, both in past and modern eras.

Since 2004, the EU and the US have put much financial and advisory effort and expertise into reforming the legal system in Iraq. This included reforms of the Federal Court and lower courts, and aimed to protect human rights and the rights of religious and ethnic minorities. The European Commission worked in compliance with bilateral agreements concluded with the Iraqi government in 2010 as well as with UNDP and the United Nations Office for Project Services. The common goal was to promote human rights and the rule of law as judicial policy priorities for the Iraqi government, including fundamental and women’s rights, in terms of personal and civil status, and the rights of minorities.

Judicial reform projects receded in the face of a political tendency to build a “sectarian state” stronger than the Iraqis’ dream of building a civil state under which all interests are protected. Iraqis – youth in particular – have a duty to oppose the current regime or any future regime generated by the sectarian-religious ideologies in order to build a decent future for all citizens shaped by the judicial system. The emergence of social and political forces that oppose the current trends inside and outside Parliament is essential, because the religious parties trying to impose

their ideological influence want to undermine the role of the judicial system.

Amidst continued anti-regime protests in Baghdad by thousands of educated youth, unionists, and women, the problem remains one of a huge rupture between the ruling elites of the Green Zone and the Liberation Square protesters. This is due to the political “ghettos” built by sectarian politicians with public money. Even the Iraqi civil movement in Baghdad is still influenced by clerics, whose political positions could change whenever their interests require them to turn their backs on the protesters.

While there are certainly voices in Parliament that oppose these trends, the odds of self-interested deals among large blocs remain high. This, in effect, is the hardest challenge for a parliamentary opposition. Moreover, oppositional parties and movements have not produced any meaningful change because none have adopted or articulated a clear reform agenda. When the fight against corruption lacks actual judicial reform and law enforcement, it becomes nothing more than slogans that even the ruling elite enjoy repeating.

Iraq needs stronger, more coherent popular pressure for real change. The goal should be to eliminate sectarian political “ghettos”, bridge the gap between politics and society, overcome the legacy of post-2003 Iraq, and take MPs out of the Green Zone and into public spaces. Otherwise, the parliament will remain little more than a subjugated, corrupt deal-making venue, where the illegitimate is legitimized. ❖

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