

FAMILY LAW IN THE KINGDOM OF BAHRAIN

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The Family Law promulgated by Legislative Decree No (19) of 2009 (the 'Family Law') is Bahrain's first codified family law and, as such, is an important milestone in the country's history in women rights. The Family Law organizes the marriage relationship of Muslims and all matters arising in connection thereto, such as engagement, dowry, maintenance, parentage, separation, custody, etc. Pursuant to the Civil and Commercial Procedures Law promulgated by Legislative Decree No (12) of 1971 the civil courts will have jurisdiction to hear personal status disputes of non-Muslims who are resident in the Kingdom of Bahrain subject to the provisions of the Law. As a general rule, the civil courts will apply the law of the State of the nationality of the husband, depending on the nature of the dispute.

This paper aims to provide a short overview of the Family Law of the Kingdom of Bahrain applying to the *Sunni courts*. The Family Law does not apply to disputes falling under the jurisdiction of the Shiite Shariah courts due to strong opposition. Activists of women rights continue their fight for the Family Law to apply to the Shiites.

The Islamic Shariah courts in the Kingdom of Bahrain derive the law from the Holy Quran, the sayings and actions of the Holy Prophet Mohammed (*Sunna*) and the consensus of Islamic scholars (*Ijma'a*), and various other sources including (*Qiyas*), (*Istihsan*), (*Ijtihad*), judiciary precedent and custom and good conscience. There are clear texts which appear in the Holy Quran and/or in the Sunna with respect to particular issues and there are texts from which only the intentions appear, and other issues on which there is no text. This inevitably left women in the Kingdom of Bahrain unprotected from unfair treatment or inconsistencies in the application of the law in the past.

STRUCTURE OF THE SHARIAH COURTS IN THE KINGDOM OF BAHRAIN

The Kingdom of Bahrain has a dual court system comprised of the civil and the Shariah courts. The Shariah courts are divided into the Lower Shariah Courts, the High Shariah Courts, and the High Shariah Court of Appeal. In each level, there are separate Sunni courts and Shiite courts. Pursuant to the Judicial Authority Law promulgated by Legislative Decree No. (42) Of 2002, the Lower Shariah Courts have jurisdiction over alimony, support, custody and inheritance. The High Shariah Courts have jurisdiction over personal status matters that do not fall under the jurisdiction of the Lower Shariah Courts and to hear appeals from the Lower Shariah Court. The High Shariah Court of Appeal has the jurisdiction to hear appeals from the High Shariah Courts.

MARRIAGE

For a marriage to be valid, the woman must not be temporarily or permanently forbidden from the marriage to the man on any of the grounds outlined under Articles (7) - (11) of the Family Law. The conditions for marriage can be summarized as follows:

- consent of both the man and the woman to the marriage;
- presence of an adult and trustworthy male witnesses, who is sane, to hear and understand the man and woman's offer and consent to the marriage;
- dower (*Mahar* or *Sadaq*) for the wife, to be agreed between the parties or determined by comparison;
- competence of the husband; and
- proportionality and appropriateness of age.

SEPARATION

The Family Law recognizes 3 different types of *separation* in a marriage by divorce.

1. Divorce by husband (*Talaaq*)

The husband has the right to divorce his wife by his unilateral free will. The divorce will fall under one of two categories: a revocable divorce (*Talaaq Rajii*) or an irrevocable divorce (*Talaaq Al-Baen*).

If the divorce is an irrevocable divorce, the husband can only return the wife with her consent and under a new contract of a marriage. An irrevocable divorce can be a minor irrevocable divorce (*Talaaq Al-Baen Al-Baynoona Al-Soghra*) or a major irrevocable divorce (*Talaaq Al-Baen Al-Baynoona Al-Kobra*). A major irrevocable divorce is where the wife becomes temporarily forbidden to the divorcing husband after he divorces her thrice.

2. (*Khul'*)

Contrary to widespread belief, the Islamic faith does recognize the wife's right to request a divorce by way of *Khul'*. *Khul'* is separation at the request of the wife, and in agreement with the husband, in exchange for an agreed consideration. Once agreed, the *Khul'* shall be deemed a minor irrevocable divorce. If the husband is not willing to grant his wife her *Khul'* request, the Family Law gives the court the authority to pronounce their separation without the consent of the husband. In the past, the terms and conditions of *Khul'* was left to the agreement of the parties and consideration extended to moneys and properties by far exceeding the *Mahar* and to custody of the children. Article (97) of the Family Law aimed to remedy this by expressly providing that the consideration agreed must not exceed the original '*Mahar*', and it is no longer permitted to demand from the wife to give up custody of the children and/or to give up any of the rights of the children as a precondition for *Khul'* (Article (98)).

3. By court

a. Divorce by court order (*Tatleeq*)

The wife may proceed to the court for a divorce by court order (*Tatleeq*) under limited circumstances. The trend in the past was that it was rare for the Shariah courts to make an order of divorce, except for cases of severe physical abuse. In an attempt to resolve this, the Family Law outlines the circumstances under which the court must give an order of divorce in some detail. They can be summarized as i) bodily or mental defects, ii) harm or prolonged disagreement, iii) imprisonment or addiction, iv) the husband's failure or refusal to pay alimony; or v) if the husband is missing.

b. Annulment of marriage (*Faskh*)

A marriage will be annulled if there are inherent flaws (*Khala*) in the contract at the time of entering into the marriage, or if circumstances that the law and Islamic Shariah has prohibited (*Moharemat*) occur, making the contract of marriage void.

THE WAITING PERIOD (*UDDAH*)

The 'Uddah' is the term used to refer to the period of waiting for the wife/widow after the divorce/death of her husband during which she cannot remarry. The Uddah period is intended to give spouses time to reconsider the divorce and/or to protect the mixing of lineage. The Uddah period of the widow is 4 months and 10 days from the date of the death of the husband. The exact duration of the Uddah period of the wife who has been divorced will depend on a number of factors.

CUSTODY

To decide on custody disputes, the Bahrain courts will take into consideration the religion, residence, income, marital status, health, and all surrounding circumstances of each of the parents. Pursuant to Article (129) of the Family Law, the wife will normally have custody of the son under 15 years and the daughter until she is 17 or she marries. Once the child has attained the age of discretion, he/she will be allowed to choose the parent or the legal custodian he/she wishes to live with, within the limitations of the Family Law.

It is worth mentioning that the Kingdom of Bahrain has faced some controversy in relation to parental child abduction. The Kingdom of Bahrain deems parental child abduction a criminal offence only if a parent removes the child from the person awarded custody or who is otherwise entitled to custody (i.e. after the act is done). If there is an ongoing custody dispute or if there is a real risk that a parent may abduct the child, either parent may apply to the Bahraini court to impose a travel ban on the child but it is not guaranteed that the court will make such an order.

The 1980 Hague Convention on the Civil Aspects of International Child Abduction is aimed to serve as an agreement between member States to ensure the return of any abducted children until custody and access are settled by the competent court of jurisdiction. The Kingdom of Bahrain has yet to sign this Convention.

CONCLUSION

At Zeenat Al Mansoori & Associates, we encourage clients to settle their disputes by out-of-court agreement and conciliation, whenever possible, to avoid creating a hostile environment for the family and the costs and stress involved in long drawn-out court proceedings.

This information has been prepared by Zeenat Al Mansoori & Associates as a general guide and does not constitute legal advice on any matter. No liability shall be accepted by us for any action taken or not taken as a result of this information. Please contact our office for any further information in relation to this article.

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