

**The Sudanese Organisation for Research and Development (SORD)**

**First Family Law Conference**

**A Critical Study of the 1991 Personal Status Law**

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**First critique of the Sudanese Personal Status Law**

## **Introduction**

The personal status law of 1991 contains the following issues:

- Engagement
- Marriage
- Divorce
- Bequest
- Financial Maintenance
- Custody
- Obedience
- Establishment of Decent
- Donation/Grant
- Will
- Inheritance
- Endowment

The legislators of the law claimed that the reason for enacting the 1991 personal status law is the inexperience of new judges who were intimidated by personal status courts as well as the injustice of the previous law which does not coincide well with the Sudanese milieu.

### **Article (10) Engagement**

Definition: A promise of marriage. All the gifts are to be returned or their worth if used given that one party chooses to end the engagement.

Critique: Items given during an engagement should not be returned and should be considered gifts. Moreover, this goes against Sudanese traditions and customs and creates therefore complications especially for women who become subjected for gossip and rumours.

### **Article (11) Marriage**

Definition: Marriage is a contract between a man and a woman based on an internal intention, whereby both can sexually enjoy each other legitimately.

Critique: This definition is obtuse and inaccurate. Furthermore, it views marriage as strictly materialistic for the sake of sexual pleasure only. In addition to that, the law determined the age of majority (*Altamyeez*) as 10 years of age.

### **Competence in marriage**

Competence in marriage is defined as regarding only manners and religion. This definition is ignorant to the fact that behavioural standard is loose and differs from one person to another and cannot be viewed in this narrow sighted manner.

### **Tutelage**

Definition: Tutelage is defined as a legislative authority over someone whereby a person's approval is implemented on another regardless of the approval or refusal of the other.

Critique: The matter of Tutelage has created a great discussion on whether it should be voluntary or compulsory. Some Islamic doctrines think that women can marry themselves if they so choose. Women have reached a high level of awareness and consciousness that tutelage becomes unnecessary and a violation of their rights. It is obscure that women in Sudan are judges and can thus marry women who do not have guardians but at the same time not be able to marry themselves???

### **Article (24)**

This article deals with the marriage of a mature woman to incompetent man without the approval of a guardian. The article states that the guardian has the right to annul a marriage contract performed without his approval. This right ceases if the woman gets pregnant or gives birth.

Critique: This article is extremely conventional and causes women to sometimes marry in secret in order to be with the man they choose.

### **Article (34) A guardian should marry a mature woman with her consent**

Although this article exists fathers still tend to marry their daughters without their consent or even their knowledge. The legislator should have put a penalty against guardians who marry women against their will. This clearly shows that women are not given their basic right of choosing their partner.

### **Permission to marry**

Many women go to court to get a permission to marry against their guardian's will. This article has led to disintegration of family unions and forces women to commit fornication which ultimately leads to other problems.

### **A judge is a guardian to women with no guardian**

This article is unfair to women since the procedures of the court are complicated and long.

### **Marriage contract**

The marriage contract is written according to men's perspective with no regards to women's status or view. Therefore, it neglects important issues such as women's right to divorce etc.

### **Article (49) Bequest (Jewellery)**

This article states that all the jewellery brought by the husband to his wife should be returned to the husband in the case of divorce if the jewellery was not given as a gift. A husband needs only to swear that the jewelleries were not gifts, for him to win such a case.

Critique: This article should be cancelled and all bequests given prior or after marriage should automatically be considered a gift.

### **Article (50) House belongings**

The article states that house belongings should be divided equally in the case of insufficient proof. However, the previous law stated that all belongings should be given to women in the case of divorce which agrees more with our Sudanese customs.

### **Article (65) Financial Maintenance**

Financial maintenance includes food, clothing, accommodation, medical care, education and all that is necessary to live a decent life. The capability of the maintainer and the economical status are taken into consideration.

### **The amount of financial maintenance**

The amount can be increased or decreased according to the economical status. Maintenance hearings do not take place until 6 months have passed.

### **Previous financial maintenance**

Wives are only granted financial maintenance for three years after the hearing.

Critique: This is unjust and a specific period should not have been stated.

### **Article (75) Denial of financial maintenance**

- Refusal to go to the marital house.
- Leaving the marital house.
- Prohibition to enter the marital house.
- Prohibition to work and persistence to work at a job that is not approved by the husband.

Critique: The legislator should have considered the above reasons thoroughly. Not allowing women to work is denying her of her basic rights.

### **Article (70) Living with the other wife (*aldara*)**

The Article states that two wives cannot live together except if they agree on that.

Critique: The use of the Arabic word *aldara* is in itself humiliating to women since the word has a negative implication. The legislator has not written a separate article dealing with polygamy. This has created many problems in courts where wives are often unaware of the presence of a second wife.

### **Obedience**

Women should obey their husbands if the following is held to be true:

- Has been given her expedited dowry.
- If the husband offers her protection.
- If the husband provides her with a marital house in a good neighbourhood and with the necessary belongings.

### **Abstention of obedience**

Women's right to financial maintenance ceases as long as she disobeys her husband.

### **The defiantly disobedient wife**

A wife's right ceases if she refuses to implement the obedience rule and is hereby considered a defiantly disobedient.

### **Implementation of the rule of obedience**

The rule of obedience should not be implemented by force.

### **Custody**

Women have the right to custody if they meet the following terms:

- Maturity.
- Mental sanity.
- Honesty.
- The ability to raise the child and protect him/her from diseases.
- Not marrying another man.
- Not being negligible.

Women's custody of boys continues until the age of seven and of girls until the age of nine. Women must be granted permission from the father in order to travel with the child/children outside of the country.

### **Divorce**

Divorce has been given to men to use as they wish with no consideration to women's right. Women can only be divorced through court for the following reasons:

#### **Divorce due to damage**

Women can be given the right to divorce if they prove the existence of damage that makes it impossible to live with their husbands such as abuse etc.

#### **Divorce due to discord**

If a divorce suit due to damage is refused, then a wife has the right to file for divorce due to discord. The judge will ask two people from the wife's and the husband's side to try to reconcile between the couples. If this does not succeed, the judge can assign a third objective party for reconciliation. After which the judge will decide on the case.

#### **Divorce for ransom**

A wife can pay an amount of money to be granted divorce if she continues to disobey her husband for a period of more than a year.

#### **Divorce due to sexual inability**

If a husband cannot perform sexual intercourse, then a wife can be granted divorce if it is proven medically that she is a virgin.

#### **Divorce due to failure to provide financial maintenance**

This is a common case in courts and is often won by the husband since the court gives the husband a chance to provide maintenance even if it is a small amount which if refused by the wife, the suit will be rejected.

### Divorce due to absence

If a husband is absent for more than a year, a wife has the right to file for divorce. The following procedures are determined by the court:

- The wife has to swear that the husband is absent.
- The public committee should be addressed as to the whereabouts of the husband.
- An announcement in a daily newspaper should be published.
- After the announcement, the witnesses are heard.
- Divorce is given.
- The wife has to swear once again.
- Divorce is granted after three months.

If the husband appears after the divorce is granted and is able to prove that his wife knew his whereabouts then he has the right to file for a revision suit even if his ex-wife has remarried.

Critique: This article is unjust to women and the legislator should have cancelled the revision right.

### **Aliidaa Waiting period**

The waiting period applies in the following cases:

- A wife has to stay four months and ten days without marriage if her husband dies.
- A pregnant wife whose husband has died after she gives birth.

The reason for this is to avoid confusion of descent.

### **Reasons for Divorce**

The divorce rate has increased greatly in Sudan which is due to the following reasons:

- The economical situation.
- Migration of men outside of Sudan, leaving their wives and children with no financial support.
- Secret marriage and other new forms of marriages.