

Paper on the Principles of the Syrian Civil Family Law's

Including the Aspired to Anti-Domestic Violence Law, which Is Aspired Aligning with the International Conventions and the Human Rights Charter



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Syrian Feminist Lobby



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This paper is based on three workshops organized and prepared by the Syrian Feminist Lobby (SFL) in November and December 2022, and attended by feminist organizations, civil society organizations, and independent Syrian personalities from inside and outside Syria. The paper was developed based on the outputs of the workshops, the contributions of all the participants, the International Bill of Human Rights and civil family laws from all around the world.

Through these workshops, legal presentations on the discriminatory laws in the Syrian Personal Status Law in terms of the legislative text, its practical applications and their impact in practice were delivered. They were presented by the two legal experts, Ms. Rola Baghdadi and Ms. Rahada Abdoush. Layout design and art works by Ward Zaraa.

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Introduction

Syrian Women suffer from discrimination and violence in the laws and society, as well as the lack of protecting laws.

There are no recent, accurate and reliable statistics on violence against women (VAW) in Syria, but this violence seems to be constantly increasing, especially in light of the armed conflict and the subsequent economic, political, security and social factors, which led to the exacerbation of the existing phenomenon of violence due to the patriarchal nature of the society and discriminatory laws, in addition to the emergence of new forms of discrimination produced by the armed conflict.

Syrian women activists have fought over the past decades to eliminate all forms of discrimination, and to reach a civil family law that aligns with the International Bill of Human Rights, where equality is achieved on the basis of citizenship for all Syrians without any discrimination.

“Violence against women” is defined as any act of gender-based violence (GBV) that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of education, health care, or liberty, whether occurring in public or in private life, and it requires special legislation for its comprehensiveness.

Since the law must be a lever for society and must protect basic human rights, including women’s rights, in accordance with the International Bill of Human Rights, it was necessary to review the laws that affect the socioeconomic life, including the personal status law for religious sects for all Syrians, to be replaced with a single civil law called family law.

The relevance of this demand manifested during the years of armed conflict in Syria, revealing the weak protection that the current law provides to women and children. This appeared through the floundering and ineffective decisions in regulating family affairs through the Sharia judge, especially regarding guardianship, custody, traveling outside borders, abandoned children and children without parentage and non-registered children, and the increasing cases of femicide in the context of domestic violence.

Introductory Section

There is no single law that citizens of different sects and beliefs may resort to, but rather multiple laws that differ depending on the religion or sect, and converge with some laws that have proved their weakness and vulnerability in the face of global changes and in the Syrian reality.

Whereas, the Personal Status Law in effect since 1953, and initially based on Kadri Pasha's Mecelle and the provisions of Hanafi jurisprudence contradicts the constitutionality of laws that establish equality among citizens of different sexes and religious beliefs, the International Bill of Human Rights, and the international conventions ratified by Syria, including the elimination of all forms of discrimination against women and the Convention on the Rights of the Child, it was necessary to abolish discriminatory legal texts and reformulate special civil laws based on [the following basic principles](#):

- Granting the right to guardianship and custodianship to both spouses, while the priority was given to the father, and to the males of the family based on the ascendants and descendants.
- Women may practice any profession within the law without the husbands' consent, and the concept of disobedient women shall be abolished from the Syrian law.
- Equally sharing the funds acquired as a result of marriage between the two partners.
- Raising the age of marriage to 18 years and unifying it for both sexes without the judge's discretion.
- Equal rights and duties for both partners in the marital relationship and after dissociation of marriage, regardless of gender and religion.
- No discrimination in inheritance based on gender or religion.
- Considering any form of violence perpetrated within the family as domestic violence that must be criminalized and requires punishment and protection for the victims. Its types are verbal, physical, sexual, psychological, economic, deprivation, coercion and their consequences.
- A marriage outside the court is not considered a formal marriage recognized by the state and does not generate any effects if not registered in the court within a short period specified by the law and in accordance with the legal requirements. The violator shall be punished if the legal requirements regarding age and consent between the spouses are not

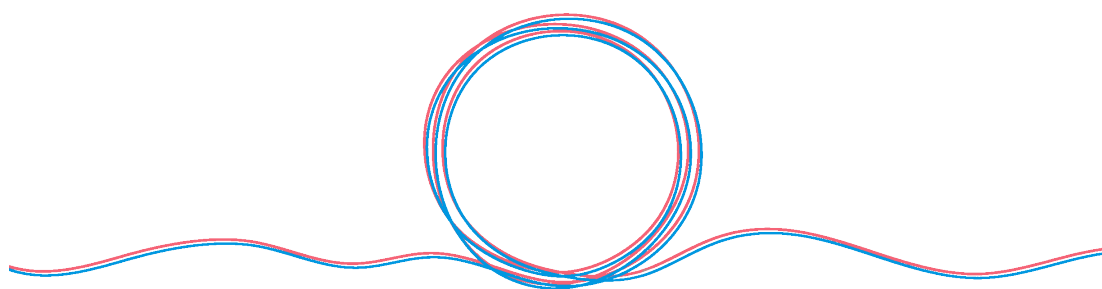
followed.

- The spouses may get married in accordance with the desired religious and cultural ceremonies, provided that they do not contradict with the family law (in terms of polygamy or child marriage). The civil marriage contract in court is the essential and sole document that has legal effects and is relied upon by the state.

General Principles

- Separation of religion and state, and enshrining equal citizenship as a constitutional basis for the relationship between individuals and the state.
- Raising the value of individuals and considering women as individuals with full rights with a constitutional guarantee and ensuring the freedoms and rights of individuals stipulated in the International Bill of Human Rights.
- Requiring the state to raise awareness on women's rights and break the stereotypes about gender discrimination, domestic and sexual violence, child marriage and gender-based discrimination.
- Consolidating awareness on human and women's rights and non-violence as a constant educational goal in all educational levels.
- Compulsory education up to secondary education, and imposing penal penalties including imprisonment and fines for parents who fail to abide.
- Enshrining and protecting free education, raising the level of public education, and ensuring indirect assistance to economically vulnerable families in all educational requirements.
- Eliminating all forms of discrimination based on gender and enshrining the principle of citizenship without any discrimination on any basis in Syrian laws, including the constitution.
- Enacting a law for associations based on respecting and supporting their independence, and guaranteeing the freedom of civil work spaces.
- The state's responsibility to protect children from domestic violence and to provide them with appropriate care.

Marriage and Divorce



This pillar focuses on defining the marriage contract pursuant to the definition of contracts in the Syrian Civil Law, and in accordance with the International Bill of Human Rights.

It also focuses on determining the causes and effects of divorce in accordance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provides for equal rights for both parties in marriage and divorce.

Principles of Marriage:

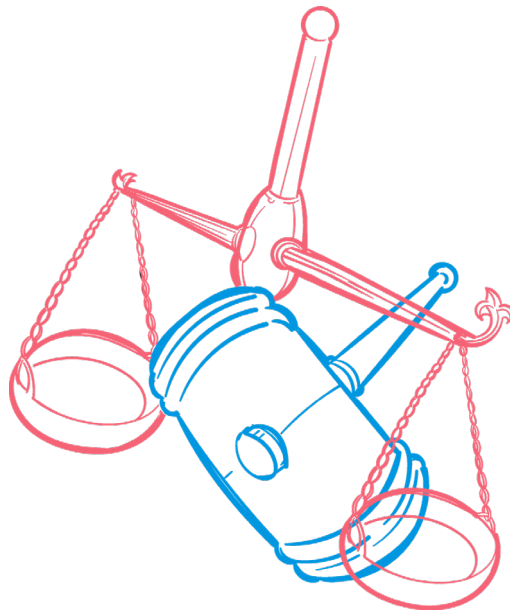
- An adult man and woman aged eighteen have the right to marry and found a family, without any restriction due to race, nationality or religion. They shall have equal rights at the time of conclusion of the marriage, during the marriage, and at its dissolution.
- Marriage may not be concluded without the full consent of the two parties wishing to be married, without compulsion.
- The marriage contract is subject to the family law.
- The marriage takes place before the competent civil legal authorities according to the law with the acceptance of both fiancés in the presence of adult witnesses, regardless of their gender or religion.
- Only the civil marriage contract is recognized by the state. As a result, the marriage is registered and the family book is issued, and the two partners may perform religious marriage ceremonies if they wish, according to their beliefs and culture.
- All citizens are subject to a unified civil marriage law, regardless of their religion or ethnicity.
- Polygamy is prohibited; therefore, a person wishing to remarry must present a document proving the divorce or the death certificate of the former spouse, and a certificate of celibacy.
- Legal guardianship is only for children. No discrimination shall be made on the basis of sex to determine guardianship, but rather on the competence of the guardian and his/her psychological, social, legal and financial competence, and the best interest of the child in accordance with the Convention on the Rights of the Child.

Principles of Divorce:

The right to divorce:

- Divorce is the right of both spouses and can be completed by mutual consent or through the court, with the consequence of dividing the joint funds between the spouses after marriage, according to the law or by a prior written agreement.

Custody, Alimony and Division of Joint Funds



Custody

The law regulates the custody of children in a way that guarantees the best interest of the child, according to the court's discretion of the best caregiver for the child, in accordance with the Convention on the Rights of the Child, which Syria has ratified.

General provisions for custody in the event of marriage:

- The caretaker (the mother/father/any person determined by the court or the competent authorities to provide care) is responsible for the formal education of the child and he/she has the duty of legal representation until the child becomes an adult. Afterwards, the adult shall represent him/herself without interference from the parents.
- The spouses are equal in rights and duties and share the care, upbringing and education of their children, in accordance with the Convention on the Rights of the Child.
- In the event of divorce:
 - Both the father and the mother enjoy equal rights with regard to applying for custody of their children. The judge shall decide in this regard based on the best interest of the child, including joint custody, and its share to both parents or to one of them, even if the parents have a prior agreement. This confirms that the custody and the public system are linked.
 - The non-custodial parent's right is limited to visiting the child pursuant to a written agreement before the court when signing the divorce. The parent shall comply with the said agreement, and each parent is entitled to request a child's visit.
 - The right to visit is mainly granted to the non-custodial parent, grandfather, grandmother and relatives, whom the court allows based on the child's desire and interest. The priority in the court's decision is for the child to enjoy healthy growth, and that his/her education is not affected. The court shall cancel the visit in case it causes harm to the child.
 - The court shall automatically decide on the issue of custody. Full or relative custody is considered among the options available in the event of divorce, with the interest of the child as a primary consideration, taking into account the assessment of specialists of the social, economic, psychological, and health status of both parties. If the custodial spouse wishes to move to another country, he/she shall inform the court, as it is responsible for regulating the visitation rights of the non-custodial parent.

- The custodian keeps the marital home after the divorce to ensure the psychological stability of the children.

Alimony

The alimony of one of the spouses

- The state is obligated to establish a fund for alimony in the event of divorce so that one spouse does not control the other.

Conditions for granting alimony to one of the spouses:
Alimony is granted solely at the request of one of the spouses.
Alimony is granted to the affected party.

- The spouse claiming alimony must be in financial need as a result to the divorce.
- Estimation of the alimony to be imposed: The amount of alimony shall be commensurate with the financial capabilities of the other party. In the event that the paying party is not able to pay, the alimony shall be covered from the state's alimony fund.
- Persons who cannot afford their necessary expenses, for example: food, clothing, medical costs and transportation, and which the other party cannot secure, are transferred to the alimony fund of the Family Court.
 - Child Support:
 - Both parents or caregivers are required to support the child.
 - The child support is estimated according to the parents' financial situation, provided that its value is not less than the child's need, in a way that gives him/her a decent life.
 - The alimony fund is committed to being the mediator between the parents and children so that the custodian can spend on the fostered child without the need for any personal follow-up.
 - The alimony fund shall provide the child with the alimony he/she needs in case the father and mother are poor.

Division of Joint Funds

Conditions for Sharing Funds Earned After Marriage:

The Family law shall determine how the joint funds of the spouses are managed and used, as well as their division upon divorce.

The sharing system of the acquired funds is automatically applied, in the event that the spouses do not choose the system of separation of the acquired funds.

The sharing system includes funds acquired during the marriage, excluding the personal property of both parties.

Funds acquired during the period of marriage are:

- Established funds and their dependencies.
- Compensations for work or traffic accidents, or fire and life insurance are excluded from the joint division.
- Funds whose ownership cannot be proven by both parties are considered joint property.

Personal property means:

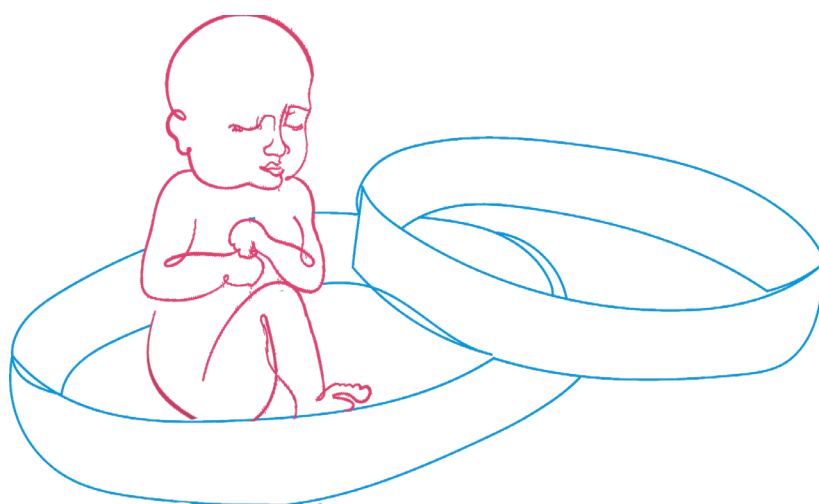
- All property acquired by one of the spouses prior to marriage.
- Gifts received by one of the spouses before or during marriage.
- Inheritance or grants received before or during marriage.

Ending the joint ownership system:

The joint property system ends with the death of one of the spouses or with the acceptance of another property regime.

The joint property system also ends in the event that the court decides to terminate the marriage due to annulment, divorce, or the conversion to the system of separation of acquired funds.

Basic Principles of Filiation, Paternity, and Adoption



Filiation and Paternity

Establishing or denying paternity: A child's paternity is established if he/she was born during marriage or within 300 days after divorce, or through DNA analysis, in case of doubt about his/her paternity.

The results of the documented medical examination are also used to determine whether or not a divorced woman or the wife of the deceased is pregnant.

Adoption

- The right to adoption shall be given to all Syrian families and individuals who meet the requirements for adoption regardless of religion and sect. A social body shall be established encompassing psychological and social specialists, to protect children and study the status of foster families and individuals applying for adoption, in terms of economic, psychological and social situations, and to decide on adoption requests while ensuring the right of the child to know his/her parentage.
- Amending the Civil Status Law and banning the registration of any newborn as foundling.
- The state shall establish a guarantee and sponsorship fund to care for children and support them economically and ensure that they do not become destitute.
- Establishing a trained and qualified community police force required to implement decisions related to family affairs.
- Activating judicial oversight over the legislative process and allowing individuals and competent civil organizations to challenge the constitutionality of laws before the Supreme Constitutional Court
- Mainstreaming the gender perspective in legislative and executive bodies and allowing the participation of women in said bodies.

Conditions of Adoption:

- Joint adoption is allowed only for spouses and individuals whose age exceeds 30 years and after specialized committees study the appropriateness of the environment that the family shall provide in terms of social, psychological, economic and health aspects.
- Adoption is authorized only by a court ruling by the court of the place of residence of the adopter or, in the case of joint adoption, the court of the place of residence of one of the spouses.

- An adopted child enjoys all the rights given to children by birth. Adoption must be followed up by the Ministry of Social Affairs and the Ministry of Justice, through the Family Court.

Principles of Women's Economic Rights within Family Law

The main principles that must be available for drafting a family law that guarantees women's economic rights:

- Citizenship, equality and separation of religion and state.
- Ratifying international treaties and agreements that stipulate women's rights without any reservation.
- The principles shall align with the International Bill of Human Rights.
- The concept of sharing in the case of a civil family law, and mentioning the example of partnership in all decisions related to family, property and child support.
- The importance of abolishing discriminatory laws and replacing thereof with laws that guarantee gender equality, and protecting the process of criminalizing discrimination with a legal claim.
- The need for a monitoring, follow-up and accountability mechanism in the implementation of laws, as changing laws alone is not enough, and we shall ensure the implementation of these laws and the criminalization of violators.
- Recognizing civil marriage, prohibiting polygamy, and granting women the right to pass their nationality to their children and husbands.
- Economic rights, equal wages and division of inheritance according to civil law.
- Ensuring the right to education for girls and women, economic empowerment, and job opportunities without discrimination.
- Distribution of inheritance without discrimination based on gender or religion.
- The state's commitment to the criminalization of depriving girls and women of education. Further, providing all appropriate opportunities for girls and women to choose the suitable education for them, and the major in which they want to specialize.
- Defining sexual harassment, criminalizing it, defining its types, and distinguishing between them according to each possible context in which it may occur, such as (harassment in the place of learning, at work, in the street and everywhere).

- The state's direct intervention in the labor market, and its commitment to prevent all forms of discrimination on the basis of gender. Moreover, to provide appropriate legislative rules that contribute to supporting women in confronting stereotypes in all workplaces and positions, and criminalizing employers in the private sector who do not apply the provisions of the law guaranteeing the rights of their workers.

Basic Principles of Domestic Violence Law

The basic principles that the Domestic Violence Law shall be based on, include and guarantee:

First: On the Constitutional Level

The Constitution shall adopt the International Bill of Human Rights, affirm citizenship, equality and prevent discrimination as basic principles on which all laws are based. Also, it shall criminalize GBV, and guarantee the right of citizens and civil institutions to access the Constitutional Court to abolish discriminatory laws and laws that undermine the rights of citizens, whether in terms of legislation, application or implementation.

- Ensuring the independence of the judiciary, establishing specialized family courts and police departments dedicated to receiving victims of domestic and sexual violence.
- Separating religion and state, and enshrining equal citizenship as a constitutional basis for the relationship between individuals and the state.
- Raising the value of the individual and considering women as individuals with full rights, with a constitutional guarantee, and ensuring the freedoms and rights of individuals stipulated in the International Bill of Human Rights.

Second: On the Legal Level and Protection

a. At the Legislative Level

- The law shall be based on equality and justice. It shall criminalize and abolish all forms of discrimination on the basis of gender within the family.
- Domestic violence shall be defined in clear and explicit terms, and shall be criminalized in the light of the International Bill of Human Rights. The crime of domestic violence shall be considered a continuous crime that does not fall under the statute of limitations.
- Differentiating between the types of violence (verbal - physical - sexual) and identifying the different penalties for each type.
- Differentiating between VAW and violence to which children, the elderly and people with disabilities are exposed, provided that the law includes

all these categories. Also, to link the severity of penalties to the degree of kinship (intensifying them to the closest) and imposing deterrent penalties.

- The law shall include effective protection mechanisms, such as protection orders to prevent the aggressor from approaching the victim, until the court decides on the assault.
- The law shall have penalties that include financial compensation for psychological and physical harm resulting from violence, and consider financial compensation as an excellent debt for those who are subjected to violence.
- The law shall stipulate the confidentiality of the whistleblower's data, whether the victim or another person.
- The law shall not link the spatial condition to the legality/authority of notification.
- The law shall shorten the legal deadlines and always consider family court cases as urgent, and decide on them promptly.
- There is a need for an agency/directorate specialized in family protection, with clear responsibilities, powers and competencies.
- The need to rehabilitate women's security and judicial bodies trained to deal with victims of violence.
- The need to establish a higher oversight committee, including representatives from the Ministries of Justice - Education - Health - Social Affairs, human rights organizations, women's rights organizations and civil work organizations.
- The law shall establish accredited and qualified listening and guidance centers for abused women.
- The law shall stipulate the woman's right to stay at home and keep away the aggressor. In the event that this is not possible, the state shall ensure adequate housing for the woman and her children, and any of her relatives whom she supports and takes care of.
- Lifting the secrecy of family court sessions, upon the victim's request.
- The state shall commit to providing free legal services. The Bar Association shall commit to having a voluntary social role in supporting abused women, whether in terms of providing legal advice, pleading before courts, or raising awareness of women's rights and combating VAW.

Third - The Role of Protection and Shelter:

- Establishing protection centers for the temporary residence of victims, the state shall provide solutions that are more sustainable and more suitable for women's lives in the future.
- The services provided by protection institutions shall be long-term.
- The non-governmental civil organizations may establish shelters in various Syrian regions, and ensure establishing a shelter in each district according to the administrative division in Syria. The shelter shall be available to women with their children, and protected by the state, in coordination

with the relevant municipalities. Women's organizations shall be given the possibility to supervise these shelters, and to implement their internal rules.

- Unified guidelines shall be adopted for all protection centers in designing, establishing, managing and protecting these shelters, dealing with victims, and developing a referral system in each region, in conformity with the International Bill of Human Rights and benefiting from successful international experiences in this field.

- The guidelines shall include clear complaint mechanisms in the event of extortion, violence, or other abuse in shelters.

- Establishing hotlines, training the cadres working on these lines, and providing the ability to transfer the case to the police to submit a report if needed and upon the caller's approval.

- Protection centers shall provide immediate and free legal support to abused women.

- Protection centers shall include economic empowerment programs and assistance in finding job opportunities.

- Psychosocial support programs shall be provided to abused women and their children.

- Protection centers shall be available across the Syrian governorates

- Hotlines referring the victim and identifying their problem shall be provided.

- Establishing a confidential referral system related to the complaint mechanism of the Public Prosecution, through trained policewomen concerned with women's issues. A document of honor within the shelters that protects the information shall be adopted.

- There must be a reporting mechanism that allows anyone who witnesses, sees or hears about violence to report it. It also shall save sources of information.

- It is vital to preserve the privacy of reporting and filing complaints in courts, police departments and shelters.

- Shelter and protection should be temporary. A protection system that includes a plan to rehabilitate, train, empower economically, and help women complete their education or learn professions, so that they can later leave the shelter and be able to manage their lives and support themselves.

- Joining the Optional Protocol to CEDAW regarding the complaint system.

Fourth: Recommendations Regarding the Role of Civil Society Organizations and Institutions

- CSOs can have an influential role in raising awareness on women's rights and domestic violence, establishing GBV as an issue that does not concern women alone, but rather the whole society, and eliminating violence as a general goal to build a healthy society.

- They shall have the role of advocacy and lobbying for the adoption of

- a civil and modern family law, and a law protecting against domestic violence.
- They shall contribute to training government cadres who are required to implement these laws, and have a supervisory role over them.
- Provide legal advice to abused women, and pressure branches of the Bar Association to provide free advice on domestic violence issues, or form specialized and funded law firms to do so.
- Making optional training courses available for those wishing to marry and have children on women's and human rights, education and others.
- To have a supervisory role over protection centers, both in terms of documenting violations or shortcomings, if any, and communicating with supporters and financiers if needed.
- Establishing partnerships between organizations and protection centers to provide consultations as an interim step.
- Preparing reports that have been submitted to the CEDAW Committee, after submitting the government report, every four years.
- Pressuring the Syrian government to lift its reservations to CEDAW.

