

## A FEMINIST EYE - MONITORING FOR CHANGE

Feminist Eye - Monitoring for Change is a feminist initiative that helps monitor the VAWG phenomenon in Syria by highlighting the legislation that tolerate violence, providing statistical data on the phenomenon, and proposing legal mechanisms to combat it.

Feminist Eye - Monitoring for Change is a knowledge, mobilisation, and advocacy tool for all those working for a VAWG-free society.

## DISCRIMINATORY PROVISIONS AGAINST WOMEN IN SYRIA'S PENAL CODE

### Article 489

1 - Any person who coerces anyone other than their spouse, either by resorting to violence or threats, to engage in sexual intercourse shall be sentenced to imprisonment with hard labor for at least fifteen years.

2 - This penalty shall not be less than twenty-one years if the victim is younger than fifteen years of age.

- The Syrian legislator did not criminalize marital rape.
- The article lacks precision and details, and it leaves too much room for interpretation, which often goes against the victim's best interest.
- Coercion is often difficult to prove (Article 186 of the Penal Code: An act that is punishable for infringing upon the will of another person shall not constitute a crime if it is committed with the consent of the other person prior to or during the said act).

### Article 473

1 - A woman who commits adultery shall be imprisoned from three months to two years.

2 - The same penalty shall be imposed on the accomplice of the adulterous woman if he is married; if he is unmarried, they shall be imprisoned from one month to one year.

3 - With the exception of confessions of guilt and acts witnessed in flagrante delicto, the only admissible evidence against the accomplice shall be the letters or documents written by him.

### Article 508

1 - If a valid marriage is established between the perpetrator of a felony mentioned in this chapter and the female victim, the perpetrator shall benefit from extenuating circumstances, in accordance with the provisions of Article 241, provided that the penalty is not less than two years of imprisonment.

The perpetrator shall be retried if the marriage ends with the divorce of the woman without a valid reason or with a divorce in favor of the victim within the first five years of marriage. Time served shall be subtracted from the penalty.

2 - If a valid marriage is established between the perpetrator of a felony mentioned in this chapter and the female victim, the prosecution shall be suspended; if a sentence had already been issued in the case, its implementation shall be suspended.

The prosecution shall be resumed and the sentence shall be reinstated if the marriage ends with the divorce of the woman without a valid reason or with a divorce in favor of the victim within the first five years of marriage. Time served shall be subtracted from the penalty.

This article:

- Enables perpetrators to act with impunity.
- Entirely defeats the purpose of the provisions granting women protection from physical and sexual abuse.
- Allows perpetrators to legitimately and legally revictimize their victim by marrying her, instead of referring her for treatment due to the psychological and physical harm she endured.

### Article 192

If the judge discovers that the motive was honorable, the following penalties shall be imposed:

- Life imprisonment or imprisonment for fifteen years instead of hard labor for life.
- Temporary imprisonment instead of temporary hard labor.
- Temporary detention instead of provisional penal servitude.

Moreover, the judge may exempt the perpetrator from the additional penalties of posting and publishing the verdict.

This article does not clearly define what is meant by "honorable motive," which is why men often use it as a pretext to commit domestic violence, including murder and abuse.

### Article 476

1 - Incest between ascendants and descendants, whether legitimate or illegitimate, siblings, paternal or maternal half-siblings or any relative of the same degree shall be punishable with imprisonment "from one year to three years."

2 - If the perpetrator has legal or de facto authority over the victim, "the penalty shall be no less than two years of imprisonment."

3 - The perpetrator shall be denied the right to custody.

- The legislator made this crime a misdemeanor, rather than a felony, despite the fact that it is related to family authority, which is often given precedence over the law in our society and should therefore be considered an aggravating circumstance.

### Article 474

1 - The husband shall be imprisoned from one month to one year if he has committed adultery in his marital home or if he publicly engages in a relationship with a mistress in any other place.

2 - The same penalty shall be imposed on his female partner.

- The woman is always deemed a principal actor in the crime of adultery and is never considered an accomplice, while the man is only deemed to be a principal actor if he commits adultery in the marital home or publicly engages in a relationship with a mistress; in all other cases, he is considered an accomplice.

- The evidence proving the crime of adultery is unrestricted for the principal actor, while it is limited to written letters and documents for the accomplice in adultery. This is a legal discrimination against women.

### Article 527

- A woman who commits self-induced abortion by using or allowing another person to use means to that effect shall be imprisoned from six months to three years.

- This article denies women their freedom and their right to bodily integrity and to preserve their physical and sexual health.

### Article 242

The perpetrator who commits the crime in an outburst of rage due to a wrongful and serious act committed by the victim shall benefit from extenuating circumstances.

This is often used as a pretext to mitigate the penalty imposed on perpetrators of so-called "honor crimes," claiming that they had committed the crime in an uncontrollable outburst of emotion.



## DISCRIMINATORY PROVISIONS IN PERSONAL STATUS LAWS

### Authorizing Child (Underage) Marriage

**Article 18, paragraph 1 of the Syrian Personal Status Law:**

If a male or female teenager claims to have reached adulthood after completing fifteen years of age and asks for authorization to marry, the judge shall grant them such authorization if they believe that their claims are true, that they are physically capable and that they are familiar with marital rights.

**Article 13 of the Personal Status Law for Members of the Greek Orthodox Community: The following conditions must be met in order to deem a marriage valid:**

a. The prospective bride and groom must be adults. However, when necessary, a marriage may be established between two persons if they have legal capacity, provided that the groom is at least seventeen years of age and the bride is at least fifteen years of age, while taking into consideration their physical capacity and health and with the approval of their legal guardian and the bishop of the diocese.

**Article 4 of the Personal Status Law for Members of the Syriac Orthodox Community:**

In order for an engagement to be deemed valid, the fiancé shall be at least sixteen years of age and the fiancée shall be at least twelve years of age; in the case of marriage, the groom shall be at least eighteen years of age and the bride shall be at least fourteen years of age.

**Article 15 of the Personal Status Law for Members of the Armenian Orthodox Community: The following conditions must be met in order for an engagement to be deemed valid:**

A man under eighteen years of age and a woman under fifteen years of age cannot be married.

**Article 24 of the Personal Status Law for Members of the Evangelical Community:**

A minor male under the age of eighteen and a minor female under the age of sixteen may be married under exceptional circumstances only by virtue of a court ruling, and provided that they are physically mature.

### Women's Guardianship of their Children (Personal and Financial guardianship)

(The man has the exclusive right, to the exclusion of the woman, to manage the personal and financial affairs of his underage children, including discipline, medical treatment, education, guidance, marriage and all other aspects of caring for an underage person)

**Article 172 of the Personal Status Law:**

The father and, if the latter is absent, the paternal grandfather shall have the exclusive right of guardianship over the underage child's money, in terms of its preservation, disbursement and investment.

**Article 27 of the Personal Status Law for Members of the Greek Orthodox Community:**

Children shall live in their father's home, as the latter is their guardian. The father shall oversee their upbringing and education in consultation with his wife, with the exception of the following cases in which they shall live in their mother's home by virtue of a court ruling.

### Restricting Women's Freedom to Choose their Spouse – Authority over Women in Marriage

(Women do not have absolute freedom to marry even after reaching the age of eighteen)

**Article 20 of the Syrian Personal Status Law:**

If a woman over the age of eighteen wishes to marry, the judge shall ask her legal guardian for his opinion within a maximum period of fifteen days. If the legal guardian does not object to the marriage, or if their objection is unfounded, the judge shall authorize the marriage, provided that the conditions of compatibility (kafa'ah) and appropriate dowry are met.

**Article 21, paragraph 1 of the Syrian Personal Status Law:**

Guardianship in connection with entry into marriage belongs to the 'usbah, or the first male paternal relative according to the order of inheritance. (The Arabic term 'usbah means a "band of strong men," but it is also used to refer to male relatives, to the exclusion of female relatives. The 'usbah of someone is their male relative exclusively, such as the son, the grandson, the father, the brother, etc.).

**Article 6 of the Personal Status Law for Members of the Syriac Orthodox Community:**

Guardianship in engagement belongs respectively to the father, paternal grandfather, brother, brother's son, paternal uncle, uncle's son, maternal grandfather, maternal uncle, maternal uncle's son and the diocese bishop or his deputy. The relative with the closest tie of kinship shall have priority. Maternal half-brothers and maternal uncles shall have the same status as paternal half-brothers and paternal uncles. If two or more relatives have equal rights to guardianship, a guardian shall be selected by lot or by the fiancée. The diocese bishop or his deputy shall assume guardianship of adult women who are fatherless and who do not have any of the abovementioned relatives, or whose father or relatives are missing or refuse to act as guardians for her marriage.

**Article 21 of the Personal Status Law for Members of the Armenian Orthodox Community:**

The following conditions must be met in order for an engagement to be deemed valid. A man and woman under the age of twenty-one cannot be married without the consent of their parents. In case of a disagreement, the father's consent shall suffice.

### Restriction of Women's Freedom to Dissolve the Marriage

**Article 85, paragraph 1 of the Personal Status Law:**

Men shall have full legal capacity to request a divorce at the age of eighteen.

Article 54 of the Personal Status Law for Members of the Greek Orthodox Community: A marriage contract cannot be terminated except by virtue of a ruling issued by the religious court based on the following reasons and upon the request of one of the spouses:

1. If the woman had falsely claimed to be a virgin, and it later appears, on the wedding night, that she had been sexually active, as evidenced by an official and signed medical certificate.
2. If a woman over the age of fourteen commits adultery voluntarily and without coercion.
3. If the woman is often inebriated and frequently engages in indecent activities with male strangers without the knowledge of her husband and continues to do so despite being advised to the contrary by the diocese priest more than three times. In this case, the couple shall be separated for one entire year. If the woman continues to engage in the same behavior during the separation period, the religious court will dissolve the marriage and authorize a divorce.

## DISCRIMINATORY PROVISIONS IN PERSONAL STATUS LAWS

### Dowry and Financial Support

(The concepts of dowry and financial support, as defined in Personal Status Laws, render women economically dependent on men, preventing the emergence of a common relationship between men and women based on sharing responsibilities and obligations and equality)

#### Article 53 of the Personal Status Law:

The wife shall be entitled to a dowry upon the conclusion of a valid marriage contract, whether the value of the dowry is determined or not and even if the dowry is turned down.

#### Article 66 of the Personal Status Law:

After receiving her immediate dowry, the wife shall live with her husband.

#### Article 73 of the Personal Status Law:

Financial support shall cease to be paid in any of the two following cases:

1. If the wife refuses to live with her husband in their marital home without a valid justification;
2. If the wife works outside the marital home without her husband's permission.

#### Article 37 of the Personal Status Law for Members of the Greek Orthodox Community:

If the woman disobeys her husband, she shall receive no financial support as long as she disobeys him. A disobedient woman is she who leaves the marital home without her husband's consent, denies her husband access to the marital home without a legal justification or refuses to implement an irrevocable decision requiring her to obey her husband or give him access to the marital home within a specified period.

### The woman is obligated to obey her husband, to live in the place of his choosing and to travel with him wherever her goes.

#### Article 70 of the Personal Status Law:

The wife must travel with her husband unless otherwise stipulated in the contract or if the judge finds that there is a reason preventing her from traveling.

#### Article 22 of the Personal Status Law for Members of the Greek Orthodox Community:

The woman shall live with her husband in their marital home unless she is forced to live elsewhere due to financial or legal reasons, provided that her husband agrees.

#### Article 33 of the Personal Status Law for Members of the Syriac Orthodox Community:

The wife is obligated to obey her husband after the contract is concluded, and she must travel with him wherever he goes, regardless of the distance, unless it is absolutely necessary for her not to travel and the religious court finds her excuses convincing.

#### Article 127, paragraph 1 of the Personal Status Law for Members of Catholic Communities:

The disobedient wife shall receive no financial support. Any pending financial support shall also be annulled in case of disobedience. A disobedient woman is she who leaves the marital home, denies her husband access to the marital home or refuses to travel with her husband to his new place of residence without a valid justification.

### Restriction of the Freedom of Married Women to Work

#### Article 48 of the Personal Status Law for Members of the Armenian Orthodox Community:

The woman may not take a job or exercise a profession except with her husband's direct or indirect approval.

### Inequality between Men and Women in Matters of Inheritance

#### Article 269 of the Personal Status Law: Without prejudice to the provisions of Article 277:

1. The share of a single daughter shall be half and that of two or more daughters shall be two-thirds
2. The daughters of the son shall have the same abovementioned share in the event that the deceased person does not have a daughter or a son's daughter that is nearer in kinship.

### The Personal Status Law allows a married man to take three additional wives

#### Article 17 of the Personal Status Law:

1. The judge has the right not to allow a married man to take an additional wife unless he has a valid excuse and unless he is able to support his wives.

### Restriction of Women's Right to Custody:

#### Article 137, paragraph 2 of the Personal Status Law:

In addition to the conditions mentioned in paragraph 1 of this article, a woman who holds custody of her children shall not take a husband with no close ties of kinship to the children, unless the court deems this to be necessary to ensure the best interest of the children.

**Paragraph 4:** The mother shall hold custody even if she belongs to a different religious community than the father, unless it is proven that she is exploiting such custody to raise the child according to religious teachings other than those of the father. If a woman other than the mother holds custody and belongs to a different religious community than the father, she shall lose custody when the child reaches five years of age.

#### Article 138 of the Syrian Personal Status Law:

The woman who holds custody shall lose such custody if she marries someone other than a close relative.

#### Article 64 of the Personal Status Law for Members of the Syriac Orthodox Community:

The mother shall hold custody, but she shall lose this right in the following cases:

1. If she is the errant party in a divorce.
2. If the husband dies and the wife is not originally a member of the Syriac Orthodox community.
5. If she raises the child in her custody according to religious teachings other than the faith and rites of the Syriac Orthodox Church.

#### Article 131 of the Personal Status Law for Members of the Armenian Orthodox Community:

Custody of the child shall be granted to the mother if she is not married to a person other than the child's father and is known for her good conduct and morals and her ability to raise and care for the child.

