



# SHAMSAHA

## Bahrain

Information included in the following section is based on Bahrain's Laws and Legislations.

### Domestic violence & Gender-based Violence

Are there laws recognising domestic violence in Bahrain?

Law No. 17/2015 concerning the protection from domestic violence ('Protection against Domestic Violence Law') criminalizes a number of acts of domestic violence.

Article 1 of the Protection against Domestic Violence Law defines "domestic violence" as any act of abuse that falls within the family. Such acts of violence include:

- Act of physical violence: any sort of violence on the victim's body;
- Act of psychological violence: Any act that results in hurting the victim psychologically including (insulting the victim)
- Act of sexual violence: Any of the following acts committed by the aggressor:
  - sexual abuse or exploitation of the victim in any means to satisfy the sexual desires of the aggressor or other parties
  - exposing the victim to sexual conduct / matter
- Act of economical violence: Any act that results in depriving the victim from his rights or freedom of using his own money.

The Penal Code also contains some general prohibitions that are applicable to domestic violence.

- Article 19 of the Constitution provides that no person shall be subjected to physical or mental torture, or inducement, or undignified treatment, and the penalty for so doing shall be specified by law.
- Murder (Article 333)
- Assault and battery and their aggravated forms (Articles 336-343)
- Article 348 provides for heavier penalties if the perpetrator is the victim's close relative, guardian or is responsible for the victim's upbringing or employer or has authority over the victim
- Kidnapping (Article 358)

- Offences against the family are contained in Articles 317-320, including matters such as:
  - failure to handover the child to the legal custodian or guardian of the child
  - kidnapping of a child by a parent or grandparent against the person who has obtained a judgement for custody or guardianship

### **Sexual Assault**

Is Rape and Sexual Assault criminalized in Bahrain?

Under Article 344, rape and sexual assault are recognized and punishable by law.

- However, Article 353 exempts rapists from punishment if they marry their victim. Article 353 remains in place.

What is the age of consent to sexual activity in Bahrain?

- The age of consent is 14 years old.
- Where the victim is a minor, under 14 years old, non-consent is presumed.
- Where the victim is under 21 years old, and has provided his or her consent, the assault is still punishable.

### **Violence in the workplace**

What are the laws protecting from workplace harassment in Bahrain?

Labour Law No. 36 of 2012, workplace sexual harassment of government employees is penalized by the Civil Service Law.

Sexual harassment the workplace is also penalized through other legislation, such as:

- The executive regulations of the Civil Service Law issued by the Prime Minister's Decision No. 51 of 2012
- The human resource regulations of the Constitutional Court in accordance with the decision of the President of the Constitutional Court No. 22 of 2016

Article 105 of the Public Sector Labour Law provide that a worker may terminate the contract of employment without notice in any of the following events:

- Assault by the employer or his representative against the worker, during or because of the work, by words or deeds that are punishable by law.
- An act considered immoral committed by the employer or his representative against the worker or a member of his family.

Other laws regulating equality in the workplace include:

Law No. 36 of 2012 issuing the Labour Law provides:

- Article 29: Subject to the provisions of this Part, working women shall be subject to all the provisions governing the employment of workers without discrimination between them where their employment conditions are similar.
- Article 30: It is not permitted to employ women for work and events during the night.
- Article 32:
  - A female worker is entitled to maternity leave on full pay for sixty days, which shall include the period before and after her confinement, provided she produces a medical certificate attested by a government health centre or one of the clinics approved by the employer stating the expected date of her confinement. A female worker may obtain an additional leave without pay because of her confinement for a period of fifteen days in addition to the aforesaid leave period.
  - It is prohibited to employ a female worker during the forty days following her confinement. An employment with another employer during the maternity leave shall be subject to the provisions of Article 62 of this Law.
- Article 33: It is prohibited for an employer to dismiss a female worker or to terminate her contract of employment because of marriage or during maternity leave.

## Marriage

What is the minimum age of marriage?

- The law does not specify the marriage age for males.
- Article 20 of the Family Law (19/2017) allows girls younger than 16 years old to be married with the permission of the specialized Islamic court (Shari'ah court) upon verifying the suitability of the marriage.
- There is no absolute minimum age of marriage below which a Shari'ah court judge cannot permit marriage.

There are special circumstances that may govern marriage.

- Articles 9(5) and 9(6) of the 2016 Decision of the Minister of Justice with respect to Madhuns 'marriage official' also require permission of the specialized Islamic court (Shari'ah court) for:
  - Marriage of a Bahraini over 60 years old with a foreigner who is not a citizen of any of the Gulf Cooperation Council countries
  - Marriage of a Bahraini woman below 20 to a foreigner over 50.

### Can a woman be forced into marriage?

Article 17 of the Family Law (19/2017) it is prohibited to force a woman to marry against her will, regardless of her age.

- Article 25 of the Family Law (19/2017) states that consent of both parties is required.
- Articles 26 and 27 provide that consent must be expressed in clear understandable terms, either explicitly or implicitly.

The mandatory registration of marriages is provided for in Article 18 of the Family Law (19/2017), which requires a marriage to be officially registered.

- However, non-registration of a marriage does not necessarily invalidate the marriage. Article 18 of the Family Law (19/2017) allows that, a marriage may be proven by evidence in accordance with Shari'ah.

### Is consent of a marital guardian (wali) required?

Consent of a woman's guardian (wali) is required to enter into marriage.

Article 17 of the Family Law (19/2017) assures that, for both Sunnis and Shia, a marital guardian cannot force a woman to get married and cannot oppose a marriage without legitimate reason.

Article 28 of the Family Law (19/2017) states that a Sunni marriage contract requires presence and consent of a woman's guardian, regardless of her age or previous marital status.

- The guardian must be male, and article 15(1) specifies how may be guardian (i.e. father, then paternal grandfather, son, brother, etc.).
- A judge can act as a Sunni woman's guardian in the absence of male relatives.

Article 15(2) provides that a Shi'i woman's guardian is her father or paternal grandfather, and if they are not present, a Shi'i adult woman may independently contract her own marriage.

- Article 15(2) also provides that a previously married Shia woman does not require a guardian to be married.

### What conditions govern the marriage?

Article 6 of the Family Law, both spouses may specify any condition in their marriage contract so long as they are not contrary to the purposes of marriage or against Shari'ah or the law.

- Conditions are valid only if explicitly stated in the marriage contract or admitted to by the parties.
  - Both parties have the right to request compliance with a condition, and under Sunni fiqh, a woman has a right to divorce in the event of a husband breaches a condition of the marriage contract.
  - The law does not guarantee a similar right to a Shia woman.

Does the law prohibit polygamy or impose strict conditions on such practice?

Shi'i and Sunni men may marry up to four wives at one time.

- Article 19 of the Family Law (19/2017) states that a man must declare his marital status in the marriage contract, and if he is married, the number of current wives must be stated.
- Article 39(d) of the Family Law (19/2017) requires a husband to treat multiple wives fairly both financially and in the time he spends with them.

## Divorce

What are the laws on Divorce under Sharia Law?

For men, the right to divorce his wife is absolute and effective immediately. However, women's right to divorce is limited.

- Both Sunni and Shia men can divorce for any reason.
- Article 18 of the Minister of Justice Decision No. 1/2016 indicates that a Sunni man may divorce his wife unilaterally, even if the wife was not present, either in writing or verbally.
- However, Article 18 of the 2016 Ministerial Decision provides that for the divorce to be valid, it must be registered with the court and a divorce certificate is then issued.
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- Shia men must register a request for divorce with the Shari'ah court. F
- or Shias, a divorce cannot be finalized unless both husband and wife are present before a Shari'ah court and the wife signs the divorce certificate in front of the judge.

In the circumstances where the women's husband refuses to divorce her, **two options are available**. She can get a judicial divorce or 'Khul'.

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What is Khul and what are the processes?

'Khul' is the process whereby the woman is required to pay her husband a sum of money to annul the marriage.

According to the Family Law (19/2017), Khul is allowed under the following justifications:

- Incurable ailment in husband for over a year (Article 104)
- Irreconcilable marital conflict (Article 110-112)
  - To determine the conflict irreconcilable, a judge will initiate reconciliation and assign family members or capable individuals to mediate and submit a report in three months to decide on divorce or Khul.
- Husband's failure to provide financially (Article 113)
- Husband's absence, desertion, or incarceration (Article 114-118)
- Husband's addiction to alcohol/drugs (Article 119)
- Deception in contractual information (Article 124)
  - A court must be notified within two months if either spouses were a victim of deception by the other after signing a marriage contract.

## **Family planning**

What are the laws on abortions in Bahrain?

Under Article 39 and 40 of the Family Law (19/2017), a husband may not deny his wife the right to have children, while a woman cannot take measures to prevent having children without the consent of her husband.

Article of 321-322 of the Penal Code (1976) prohibits abortions that are carried out without:

- the advice and assistance of medical practitioners;
- the consent of the woman.

Article 19 of the Practice of Medical and Dental Professions (1989) provides that, a woman has the right to an abortion if a doctor certifies that her life is in danger and if her husband consents to the abortion.

## **Child Custody**

According to Articles 133-134 of the Family Law (19/2017):

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- Fathers have priority right over the guardianship of their children. A father or guardian is responsible for managing the child's affairs, upbringing, and education.

Article 124-125, 128 of the Family Law (19/2017) maintains:

- A Sunni mother has priority in custody of her children until the son reaches 15 years old and or the daughter is married and her marriage is consummated.

Articles 126 of the Family Law (19/2017) maintains:

- A Shia mother has priority in custody of her children until a son or daughter reaches seven years of age, after which custody reverts to the father.
- Once a son reaches fifteen or a daughter reaches nine years or age, they are given the option to choose the parent/guardian to live with.

In all cases:

- A mother must be Muslim and of sound health and mind to have custody of her children.
- Articles 127 of the Family Law (19/2017) governs: if the mother remarries, custody of the children reverts to the father, unless a judge determines that it is in the interest of the child for her or him to remain in the custody of the mother.
- Article 129 of the Family Law (19/2017) permits a judge to award custody to other relatives or other parties in absence of the parents.
- Article 130 of the Family Law (19/2017) permits a judge to call experts in psychological and social matters in a custody hearing to assist in the determination of what is the best interests of the child so long as it does not contradict the custody provisions laid out in the law.
- Article 134(b) of the Family Law (19/2017) specifies for maternal custody, unless married to another man or kept as a guardian by a court order for the benefit of a child.
- Article 134(b) of the Family Law (19/2017) also specifies that a custodian mother may not move outside of Bahrain with the child except by permission of the child's guardian, and a guardian may not travel or move the child to another country without permission of the custodian.

## **1. Alimony under the Sharia**

What are the women's financial entitlements after divorce?

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Generally, upon divorce, a Shia and a Sunni woman may be entitled to:

- Financial maintenance during the waiting period after the divorce (iddah) which is a required, mandatory waiting period (usually between 10 days and four months) after a woman is divorced or widowed before she is legally allowed to remarry.
  - The rationale for financial maintenance is to rule out possible pregnancy before a woman remarries and to give a husband a chance for reconciliation to return to his wife.
- Financial compensation (mutaa) resulting from a divorce before consummation of a marriage
- place to reside in or the equivalent in rent, if she was a custodian of the couple's children.

There is no legal concept of matrimonial assets.

Under Article 90-92 of the Family Law (19/2017):

- The amount of iddah and child maintenance amount may be agreed mutually and recorded in the divorce certificate or awarded by the court;
- The mutaa compensation for a wife divorced prior to consummation of a marriage for is either (a) half the agreed mahr; or (b) half a mahr payable to her peers (for Sunnis) or in accordance with the husband's means (Shia).
- The amount of financial compensation for Sunnis (if the marriage was consummated and the wife was not at fault) is evaluated based on the husband's financial means, length of the marriage and the circumstances of the divorce and is subject to a maximum of one year's worth of financial maintenance.
- A Shia wife is not entitled to compensation if the marriage was consummated.