

Bahrain

1. Discrimination in the family

a) Overarching legal framework for marriage

The Bahrain Personal Status Code, adopted in 2009, governs family and marriage for Sunni Muslims. The Personal Status Code (Art. 26) requires the woman to obtain the consent of a guardian, typically a family member, before she can enter into marriage. Cohabitation is perceived as an exclusive marital right, and not permitted outside of marriage (Bahrain, 2009).

For the Shiite majority, matters related to the family, marriage and inheritance continue to be governed by Sharia and customary law, with the result that cases are decided on the basis of judges' personal interpretations of Islamic texts instead of codified law, often meaning that women's rights are ignored or violated in the courts (HRW, 2016; Freedom House, 2010). Personal status matters for non-Muslims are governed by the civil courts (HRW, 2016).

Overall, the Bahraini government maintains a reservation to Article 2 of CEDAW, where it deals with "a woman's position in the family in respect of guardianship, the financial rights she enjoys and inheritance" (CEDAW, 2011). The Bahraini government posits that these matters fall under Sharia law, a principal source for legislation in the State (CEDAW, 2011).

b) Child marriage

Ministerial Order No. 45, issued in 2007, fixes the minimum marriage age for Shiite Muslims at 18 for boys and 15 for girls. However, a Sharia court can give permission for a marriage to take place before a girl reaches the age of 15, in cases where there is "necessity" (Bahrain, 2007).

The Personal Status Code, which applies to all Sunni Muslims, sets the minimum age for girls at 16, stating that "a minor under the age of sixteen years shall marry with the consent of the Shari'a Court after ascertaining the suitability of the marriage" (Bahrain, 2009). There is no evidence of steps being taken by the government to increase the marriage age for girls (CEDAW, 2011; CEDAW, 2013). Conservative lawmakers in Bahrain have argued that increasing the marriage age violates Sharia (Freedom House, 2010).

c) Household responsibilities

As per Article 38 of the Personal Status Code, men are the head of the household and women are required to care for and obey their husbands (Bahrain, 2009). Married women are legally required to live in the marital home, the location of which is chosen by the husband (Bahrain, 2009; CEDAW, 2011).

Both husband and wife are responsible for the care of their children, however, the father is considered their legal guardian until they reach the age of majority (Bahrain, 2009, Art. 36). Bahrain law follows the approach of dividing the functions of parenting into those of custodian and guardian, identifying the former with the mother and the latter with the father (Bahrain, 2009; Welchman,

2010). The custodian has duties of physical care and bringing up minor children, while the guardian has authorities regarding their financial affairs, education and travel (Welchman, 2010).

d) Divorce

The initiation and finalization of divorce is governed by Sharia law, which is not codified, and confronts women with significant financial legal and societal hurdles (CEDAW, 2013). Sharia law gives men the right to divorce that is effective immediately: Sunni men only need to orally announce their intent to divorce, while Shia men must record their intent in writing (BCHR, 2014). Women, on the other hand, can only seek out a judicial divorce based on specific reasons (such as desertion or illness of the husband) or, to avoid the burden of evidence, initiate the Islamic divorce practice of *Khula*, a process which requires them to return their dowry (UNICEF, 2011; BCHR, 2014).

Under the Personal Status Code, custody of children following divorce is automatically granted to Sunni women until boys reach the age of 15 and daughters reach the age of 17 (Bahrain, 2009). For Shiites, mothers retain custody until boys reach the age of seven, and girls reach the age of nine (Freedom House, 2010).

In both cases, women only have physical custody over their children, as the father retains legal custody and guardianship (CEDAW, 2011). This carries significant implications, for instance that the father can prevent his ex-wife from taking the children out of the country. A woman also loses custody of her children if she remarries (Bahrain, 2009).

e) Inheritance

Inheritance, like divorce, is governed by Sharia law which provides guidelines for calculating inheritance shares and gives preference to sons, with shares going to sons that two times greater than shares received by daughters (BCHR, 2014). The Bahraini government, however, has stated that this is not a general rule, and is only applied in certain cases (CEDAW, 2011). Disinheritance and property grabbing are not addressing in the Personal Status Code (Bahrain, 2009).

In practice, women's inheritance rights may be violated by the male executors of a will, who in some cases do not follow the law and refuse to give women the inheritance to which they are legally entitled (Freedom House, 2010).

2. Restricted Physical integrity

a) Violence against women

Bahrain does not currently have overarching legislation regarding violence against women. The 1976 Penal Code contains specific provisions that criminalizes rape and sexual harassment, and the government passed a Law on the Protection Against Domestic Violence in 2015.

Honour killings are punishable under Article 363 of the Bahrain Penal Code (Bahrain, 1976). However, Article 334 of the Penal Code allows for a reduced penalty for those who kill their spouses when they catch them in the act of adultery (Bahrain, 1976).

b) Domestic violence

In 2015, the Bahraini government adopted the Law on the Protection Against Domestic Violence. The law defines domestic violence as “every act of victimization (...) committed within the family,” including physical, sexual, psychological and economic abuse.

The law establishes a Family Guidance Department in the Ministry of Social Development to provide family guidance and awareness services in the field of domestic violence, and to set up Family Counseling Centers for victims (Bahrain, 2015). The law also calls on the Ministry to take measures to prevent and reduce domestic violence, including awareness-raising on family counseling services, treatment and rehabilitation; presence of a Ministry representative in criminal procedures; and, collecting and disseminating data (Bahrain, 2015). The law contains guidelines for the police and Public Prosecution on dealing with domestic violence victims, including the protection of their anonymity (Bahrain, 2015). There is no specific budget allocated to these services and guidelines, and no evidence available on the implementation of the law.

Human rights organizations in Bahrain have alleged that spousal abuse of women is widespread (BCHR, 2014; U.S. Dept. of State, 2016). In practice, women frequently do not seek legal redress from domestic abuse due to fear of social reprisal and stigma (U.S. Dept. of State, 2016). Female victims of violence may have difficulty knowing who to contact or how to proceed when filing a complaint, and judges and courts may not be fully informed about the guidelines prescribed by the new Law on the Protection Against Domestic Violence (U.S. Dept. of State, 2016).

c) Rape

Rape is illegal under Article 344 of the Bahrain Criminal code, and is broadly defined as “any person who assaults a woman without her consent” (Bahrain, 1976). Rape and sexual assault are punishable by life imprisonment or the death sentence (Bahrain, 1976, Art. 344).

The law provides for increased penalties for aggravating circumstances, including gang rape, loss of virginity of the victim, or the victim sustaining a venereal disease (Bahrain, 1976, Art. 353). **The law** does not recognize marital rape as a crime, and allows a rapist to avoid punishment if they marry the victim (Bahrain, 1976, Art. 353). The non-consent of the victim, outside of a marriage, is presumed if she is under 14 years old (Bahrain, 1976, Art. 344).

As with domestic violence, women often do not report cases of rape due to fear of stigmatization (BCHR, 2014). The migrant and domestic worker population in Bahrain is particularly vulnerable to rape, and often do not report the crime since they have difficulty leaving their place of work or accessing identification documents or passports (U.S. Dept. of State, 2016).

d) Sexual harassment

Sexual harassment is illegal in Bahrain under Article 350 of the Penal Code, which frames harassment as “commit[ting] an act of indecency with a female” (Bahrain, 1976). Violators are subject to a prison sentence of up to one year, or a fine of up to BD 100 (Bahrain, 1976). The law does not prescribe specific locations covered by the definition of sexual harassment, only that indecent acts against women can be committed both in public and private (Bahrain, 1976). Sexual harassment remains a

widespread problem for women in Bahrain, especially foreigners employed as domestic workers and in other low-level service jobs (U.S. Dept. of State, 2016).

e) Female genital mutilation

There is no evidence that Female Genital Mutilation (FGM) is practiced in Bahrain, and the country does not have any legislation related to FGM in place.

f) Abortion

Abortion is legal in Bahrain in all cases, but requires the assistance of a medical practitioner (Bahrain, 1976, Art. 323). Women who commit an abortion without the advice and assistance of a medical practitioner are subject to a prison sentence of up to six months, or a fine of up to BD 50 (Bahrain, 1976, Art. 321). According to the Personal Status Code, women are also required to get the permission from their husbands in order to refrain from giving birth, though the code does not specify penalties (Bahrain, 2009, Art. 38).

More

Bahrain is considered a popular destination for trafficked persons, including women trafficked for sexual purposes and female domestic workers (U.S. Dept. of State, 2017). High numbers of female domestic workers live and work in slavery-like conditions, with restricted freedom of movement, unpaid wages, and reports of physical and sexual abuse (Freedom House, 2010; U.S. Dept. of State, 2017).

Act No. 1 on Combating Human Trafficking, passed by the government in 2008, criminalizes acts of trafficking and defines penalties including both imprisonment and fines (Bahrain, 2008). The Act provides for the treatment of victims including medical, psychological, and housing assistance if needed (Bahrain, 2008). The Bahrain Labor Law, however, despite introducing legal protections for migrant workers, states that most of its provisions do not extend to domestic workers; for instance, domestic workers are not entitled to limits on their work hours, weekly days off, and the right to leave their employers (Bahrain, 2012).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Under Bahrain's Constitution, women have the right to own, access, and manage land and property, regardless of their marital status (Bahrain, 2002, Art. 9). Separation of property is the default in Bahraini marriage, with women retaining control and ownership of any property that they bring into the marriage unless stipulated in the marriage contract (Bahrain, 2009). There is no evidence that the law provides for joint land titling. Some women authorize a male family member to manage their land and property, and women may have difficulty accessing joint property following divorce (Bahrain, 2009).

Inheritance, of land and non-land assets, is governed by Sharia law, which often places women at a disadvantage. In the absence of a direct male heir, Shia women may inherit all of their husband's property, while Sunni women inherit only a portion and divide the balance with brothers or other

male relatives of the deceased (U.S. Dept. of State, 2016). More highly-educated families sometimes use wills and other legal tools to mitigate discriminatory effects (U.S. Dept. of State, 2016).

Since the Bahraini government has made a reservation on CEDAW implementation related to inheritance law, arguing it is governed by Sharia law in Bahrain, the government has not undertaken any public measures to protect women's property and land rights in the context of inheritance (CEDAW, 2011). The government has also stated that because of its geographical makeup, Bahrain has no "town" and "country" distinction, and as such does not implement specific public measures for the benefit of rural women (CEDAW, 2011).

b) Secure access to formal financial resources

The law does not place restrictions on women's access to financial services, including credit and the ability to start a business (World Bank, 2016). In practice, gender roles and cultural norms, which expect women to adopt traditional household structures and care for their home, husband and children, may curb the ability of Bahraini women to start businesses, become financially independent and enter the labour force (Freedom House, 2010).

The Supreme Council on Women implements various programs intended to increase women's economic participation and entrepreneurship, including the financing of small and medium-sized enterprises and the establishment of the Family Bank (CEDAW, 2011). The government has also established the Bahrain Development Bank which provides microcredit and larger loans, with the vast majority of its beneficiaries being women (CEDAW, 2011; Freedom House, 2010).

c) Workplace rights

Bahrain has not ratified any key ILO Conventions regulating equal rights and opportunities in the workplace, aside from the Discrimination in Employment and Occupation Convention (ILO, 2017).

The Bahrain Labour Law mandates non-discrimination on the basis of sex in employment, stating that "female workers shall be subject to all of the provisions governing the employment of male workers without discrimination in similar situations" (Bahrain, 2012, Art. 29). However, it does not specifically cover areas of employment, such as selection criteria, training or promotions (Bahrain, 2012). The Labour Law also prohibits discrimination in wages based on sex (Bahrain, 2012, Art. 39). The law prohibits women from entering certain professions (Bahrain, 2012, Art. 31)

As per the Labour Law, female workers are entitled to 60 days of maternity leave including the period before and after delivery, paid for by their employer (Bahrain, 2012, Art. 32). The law protects women's employment security as a result of marriage or during pregnancy leave (Bahrain, 2012, Art. 33). There is no paid paternity leave or parental leave in Bahraini law.

Women do not need permission from their husband to choose a profession or register a business, as the liberty to choose one's type of work is a fundamental constitutional right (Bahrain, 2002, Art. 13). However, in practice, some fields remain segregated based on gender: women are underrepresented in engineering and overrepresented in education and health care (Freedom House, 2010). Bahraini women's labour force participation rate is consistently lower than that of their male counterparts (CEDAW, 2011).

4. Restricted Civil liberties

a) Citizenship rights

Under the Bahrain Citizenship Act, Bahraini men and women have equal rights to acquire, change and retain their nationality (Bahrain, 1963, Art. 4). However, under Article 7 (1) of the Act, only men can confer their nationality to their foreign spouses (Bahrain, 1963). In order to register a child's birth, the father of the child or a relative needs to be present (UN Stats, 2013).

Mothers are only able to confer Bahraini nationality to their children if the father is unknown, or if the child is not legally related to the father (Bahrain, 1963, Art. 4). The Bahraini government has stated that the Bahraini legislature recognizes the "right of blood" on the father's side to affirm a feeling of national belonging and to avoid the acquisition of dual nationality (CEDAW, 2011). As a result of the law, Bahraini women face problems because their children are deprived of citizenship, particularly in cases where the husband of a Bahraini woman dies or divorces her while she remains on Bahraini soil with her children (BHCR, 2014).

The law does not provide for freedom of movement and access to public space for all persons: married women need permission from their husband or guardian to obtain a passport (Bahrain, 1975, Art. 13). However, it is illegal for a husband to confiscate his wife's travel documents (CEDAW, 2011). Women are sometimes limited by socially imposed restrictions. For example, some women are still pressured to request permission from the male head of the household or from their husband before travelling abroad or leaving their home to visit friends or family, even though they are legally entitled to do either freely (Freedom House, 2010; BCHR, 2014). It remains socially unacceptable for unmarried women to live alone, and in general, the day-to-day freedom of movement of unmarried women is more closely controlled than that of married women (BHCR, 2014).

b) Voting

Under the Bahrain Constitution, all citizens regardless of gender have the right to vote to participate in public affairs and may enjoy political rights, including the right to vote, which was given to women in 2002 (Bahrain, 2002, Art. 1(e)). Social norms and legal barriers, however, continue to restrict women's suffrage as women are pressured to vote in line with their husbands or follow the advice of religious authorities (ADHRB, 2016).

c) Political voice

Women and men in Bahrain are equally entitled to stand for elections and hold public office (Bahrain, 2002, Art. 1(e)). Bahrain does not have legal quotas to promote women's political participation at either the local or national level (UNICEF, 2011). Bahrain's Supreme Council for Women implements initiatives, including training and capacity-building programmes, to enhance women's engagement in politics and civil society (CEDAW, 2011).

Women have held major political positions at all levels, including as Ministers, but their participation in the national government and presence in decision-making positions remains low compared to that of men (BCHR, 2014).

The Bahrain Center for Human Rights (BCHR) reports that the Bahraini government continues to silence and arrest and imprison women human rights defenders: since 2011, the BCHR has documented the arrest of more than 300 women (BCHR, 2016). The 2016 *Freedom in the World* index rates Bahrain as “not free,” attributing its ranking to attacks on freedom of speech and the press, clashes between security forces and protestors, and the harassment, intimidation, and prosecution of activists, including women human rights defenders (Freedom House 2016).

d) Access to justice

The legal system in Bahrain consists of civil courts, with jurisdiction of civil, commercial and criminal matters, and Sharia courts, which adjudicate disputes over personal status issues such as marriage, divorce, inheritance and child custody (Freedom House, 2010). Under the Bahrain Constitution and Code of Criminal Procedures, women and men have *de jure* equal access to justice, including the right to sue and be sued, and have their evidence held in equal weight (Bahrain, 2002; Bahrain, 2002b).

In practice, judges in Sharia courts are frequently conservative religious scholars with limited formal legal training, who issue rulings based on personal interpretations of Islamic texts (Freedom House, 2010; BCHR, 2014; U.S. Dept. of State, 2016). As a consequence, rulings are commonly to the disadvantage of women’s rights, with reports in some instances of women’s petitions being turned down before they had the opportunity to present their case (Freedom House, 2010).

The king appoints all judges, with courts subject to government pressure and beholden to political interests. There is no evidence that any women are currently acting as judges in Sharia courts (Freedom House, 2016).

Sources

BCHR (Bahrain Center for Human Rights), 2014. Discrimination Against Women in Bahraini Society and Legislation, available at:

<http://www.wluml.org/sites/wluml.org/files/Discrimination%20Against%20Women.pdf>

BCHR (Bahrain Center for Human Rights), 2016. Bahrain Continues Targeting Women Human Rights Defenders - A Briefing Of The Situation, available at: <http://www.bahrainrights.org/en/node/8337>,

Bahrain (Government of the Kingdom of Bahrain), 1963. *Bahraini Citizenship Act and Amendments*. Available at: <http://www.refworld.org/pdfid/3fb9f34f4.pdf>

Bahrain (Government of the Kingdom of Bahrain), 1975. *Law No. 11 of 1975 Regarding Passports, as amended in 2012*. Available at: <http://www.legalaffairs.gov.bh/Media/LegalPDF/K1175.pdf>

Bahrain (Government of the Kingdom of Bahrain), 1976. *The Penal Code*. available at: https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf

Bahrain (Government of the Kingdom of Bahrain), 2002. *Constitution of Bahrain*, available at: http://www.moj.gov.bh/en/Print_pf3c0.html?printid=964

Bahrain (Government of the Kingdom of Bahrain), 2002b. *The Code of Criminal Procedures*, available at: https://www.constituteproject.org/constitution/Bahrain_2002.pdf

Bahrain (Government of the Kingdom of Bahrain), 2007. *List of legal authorized persons and provisions for the documentation of personal status papers*, available at: <http://www.moj.gov.bh/default4141.html?action=article&ID=1469>

Bahrain (Government of the Kingdom of Bahrain), 2008. *Law No. 1 of 2008 with respect to Trafficking in Persons*, available at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=81817

Bahrain (Government of the Kingdom of Bahrain), 2009. *Personal Status Code/Family Law*, available at: http://www.moj.gov.bh/tmp_subpage1b55.html?action=category&ID=681

Bahrain (Government of the Kingdom of Bahrain), 2012. *Labour Law*, available at: <http://lmra.bh/portal/files/cms/shared/file/labour%20law%202012.pdf>

Bahrain (Government of the Kingdom of Bahrain), 2015. *Law on Protection from Domestic Violence*, available at: <http://www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=73093#.WPXpPI96pp>

CEDAW (Committee on the Elimination of All Forms of Discrimination against Women), 2013. List of issues and questions in relation to the third periodic report of Bahrain, CEDAW/C/BHR/Q/3, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/416/20/PDF/N1341620.pdf?OpenElement>

CEDAW (Committee on the Elimination of All Forms of Discrimination against Women), 2011.

Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Third periodic report of States parties:

Bahrain, CEDAW/C/BHR/3, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/BHR/3&Lang=en

Freedom House, 2010. Women's Rights in the Middle East and North Africa: Bahrain, available at:

https://freedomhouse.org/sites/default/files/inline_images/Bahrain.pdf

Freedom House, 2016. Freedom in the World: Bahrain, available at:

<https://freedomhouse.org/report/freedom-world/2016/bahrain>

NGOs in Bahrain, 2008. The Shadow Report on the Implementation of the CEDAW, available at:

http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BHR/INT_CEDAW_NGO_BHR_42_8141_E.pdf

UNICEF, 2011. BAHRAIN: MENA Gender Equality Profile Status of Girls and Women in the Middle East and North Africa, available at: <https://www.unicef.org/gender/files/Bahrain-Gender-Eqaulity-Profile-2011.pdf>

U.S. Dept. of State (United States Department of State), 2016. Bahrain Human Rights Report, Bureau of Democracy, Human Rights and Labor, available at:

<https://www.state.gov/documents/organization/265704.pdf>

U.S. Dept. of State (United States Department of State), 2017. Trafficking in Persons Report, Country Narratives: Bahrain, available at: <https://www.state.gov/documents/organization/271341.pdf>

World Bank, 2016. *Women Business and the Law: Getting to Equal*, available at:

<http://wbl.worldbank.org/reports>