



A comparative study of the principles and rulings governing personal status in the civil laws of Iran and Iraq

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Abstract

The topic of "Comparative study of principles and rulings governing personal status in the civil laws of Iran and Iraq" is one of the important topics in the field of civil and family law, which, given the cultural, religious and historical similarities between the two countries, plays a significant role in better understanding and promoting laws related to personal status. This research aims to identify and accurately analyze the principles, rules and rulings related to personal status issues, including birth, identity, citizenship, marriage, divorce, guardianship, custody and will in the legal systems of Iran and Iraq. The research method is comparative-analytical and based on the study of legal, jurisprudential texts and judicial opinions of both countries, it explains the key similarities and differences. The findings show that although Iran and Iraq have many similar principles and rulings in personal status laws due to cultural and religious ties, there are also differences in the way laws are implemented, the way jurisprudential interpretation is carried out and the extent of the impact of new civil laws. In particular, issues such as marriage and divorce, the application of guardianship and custody, and regulations related to citizenship in both countries have legal and procedural differences that are rooted in the different interpretations of Shiite and Sunni jurists and the specific legal structures of each country. These differences have not only created challenges for the legal systems of each country, but also provided opportunities for the exchange of legal experiences and reform of laws in order to increase justice and further protect the rights of individuals, especially women and children. Therefore, by presenting a comparative model, this research can help strengthen legal cooperation and promote the level of coordination of laws in the field of personal status between Iran and Iraq and provide a platform for the development of family law in the region. The results obtained can be a guide for legislators, lawyers, and legal researchers to take steps to improve the quality of the legal system and guarantee the rights of citizens while preserving local and religious characteristics.

Key Words: personal status, Iraqi Personal Status Law, Iranian Civil Law.

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Introduction

In the two legal systems of Iran and Iraq, matrimonial matters have been greatly influenced by jurisprudential principles. However, in the Iranian legal system, the subject is richer and deeper. In Iran, the main source of matrimonial matters should be sought in two long-standing laws: the Civil Code and the Matrimonial Law, and some specific laws, including the Family Protection Law and the Civil Registration Law. In addition, judicial practice has played an unparalleled role in this area. Thus, matters such as guardianship, regulations regarding missing persons, regulations regarding estates, debts of the deceased, regulations regarding wills, confinement, residence, and inheritance are among the matrimonial matters in

Iran that have been reflected in a very detailed manner in various laws. On the other hand, in Iraq, the main source of matrimonial matters is the law that was passed in 1959 with number 188 in 94 articles. In the last two decades, the law has been one of the most challenging and controversial laws. Opponents of this law often believe that the law does not reflect the religious differences of all religious and religious groups in Iraq and that its implementation is inflexibly mandatory for all groups and residents of Iraq based on Hanafi jurisprudence. In other words, the law in question was drafted based on the religion of a minority of the inhabitants of Iraq and cannot meet the legal expectations of the majority; especially since personal circumstances in the Imami jurisprudence, which constitutes the majority, are very rich. The issue is also subject to social conditions and profound political developments. Also, from a legal perspective, it is said that "custom", which is a very important source in the field of civil rights, has taken on a completely different face in Iraq, and the custom of half a century ago was completely different from the custom of today's society and has become of a different type and nature. In addition, the same is true in terms of population and urban context (demographic factors). While the urban population in the past fifty years was mostly rural, very deprived, and often illiterate, and for example, they conducted their personal affairs based on their own jurisprudential standards in a consensual and "normal" manner, today we are witnessing the formation of several times more populations and communities from urban strata and the urban middle class who want to regulate their personal affairs based on their own jurisprudence (Imamiyah jurisprudence). In contrast, supporters of the aforementioned law want to amend the aforementioned law, not repeal it, and their main reason is the absence of opposition and contradictions between the law in question and the personal affairs of other sects. According to them, as is explicitly stated at the end of this law, "multiple sources for litigation and the dispersion of rulings in personal affairs will lead to the instability of family life and the instability of individual rights." This is a regression and a return to an era when modern life and government had not been formed. In addition, changes should not be made easily in the field of personal status. Unfortunately, the issue of Iraq's personal status law has been very controversial and challenging. But the important question is whether Iraq, due to its religious similarity to Iran, can benefit from Iranian resources in the field of personal status or follow suit? Does the aforementioned law have the power and capacity to resolve it through summary judicial procedure? Has Iran's marriage law so far been able to meet the needs of Iran's multicultural and multi-religious society in the field of marriage affairs so that it can become a model for other countries, especially Iraq? In this article, we try to find a detailed and clear answer to these answers through comparative comparison.

Personal status

Personal status refers to a set of legal characteristics of an individual that define their identity and status in society and before the law, but the main focus of this definition is on non-financial matters. These fall into several main categories:

The first is lineage, which refers to a person's blood and family relationships; that is, who the individual is a child of and what kinship relationships they have with others. This is very important because it determines rights such as inheritance, parental guardianship of children, and maintenance obligations.

The second is marital status. Whether a person is single, married, divorced, or has a spouse deceased, all of these are considered personal status and entail rights and responsibilities related to marriage, such as dowry, spousal support, and custody of children.

The third is capacity, which refers to a person's legal ability to perform legal acts. That is, how much a person can legally own and how much they can exercise these rights themselves. In order for a person to have full capacity, they must be of sound mind and mature. If they do not have these conditions, they may need a guardian or conservator to manage their affairs.

Fourth, there are issues such as guardianship, guardianship and testamentary disposition. These are mechanisms that are designed to manage the affairs of people who do not have full capacity, such as children or people with mental disorders. Guardianship is usually exercised by the father and paternal grandfather, and in their absence, the guardian or conservator takes over.

Fifth, the person's place of residence. This means the place where the person lives permanently and primarily and is considered the center of their most important life affairs. The place of residence plays a role in determining the jurisdiction of the courts and the service of judicial documents.

Finally, the status of absence and presumed death is also part of personal status. This is when a person disappears and is not heard from. After a certain period of time and by court order, the person may be presumed dead, which will have significant legal implications for the life of his or her spouse and heirs.

Personal status is our non-financial legal identity card that determines our identity, family status, and legal abilities, and is the basis for many of our relationships and rights in society.

Person

If we want to look at "personality" from the perspective of personal status, we actually mean "legal person", not personality in the psychological or moral sense. "Legal person" or "legal personality" generally refers to anything that the law gives the ability to have rights and duties. This "person" can be a human being (called a "real person" or "natural person"), or an institution, organization, company, or even the government (called a "legal person" or "credit person"). But when "personality" is discussed in the discussion of personal status, the main focus is usually on real people (i.e. humans). Because personal status (lineage, marital status, capacity, etc.) are characteristics that are directly tied to the status and identity of a human being. So, in short, personality from the perspective of personal status refers to the legal status of a human being (a natural person), which includes a set of his non-financial characteristics (such as who he is, whether he is married or single, whether he has legal capacity, etc.). This legal status determines his rights and duties in society. Therefore, when we talk about personal status, "personality" means the legal and non-financial identity of an individual that the law recognizes and assigns legal effects to it.

Marriage

In addition to its abstract and general meaning, which refers to the social institution of marriage, the word marriage also has other meanings in different applications. This word refers to both the legal and legal relationship between a man and a woman, which involves mutual obligations and the creation of a marital bond, and to the religious and social ceremonies and rituals related to it. Marriage also describes the current relationship between a man and a woman, which can be referred to with terms such as "having a wife", "having a husband" or generally "marriage". (Al-Barzi Worki, 1371, 4)

In other words, marriage is an Arabic word that combines two distinct things and, in simpler terms, means "getting married and being married together". This meaning has gradually been used in the union of a man with a woman in a special way for the formation of a family, to the extent that, in general, no other meaning comes to mind other than this meaning. However, in the terminology of jurisprudence, Islamic jurists have various definitions, all of which revolve around the main purpose of marriage, which is the permissibility of the enjoyment of a man and a woman. A group of people who believe that "marriage is a contract that makes it permissible for a man to enjoy a woman who does not have a religious impediment to marry her" (Sheikh al-Islami, 1385, 34).

Marriage is a three-way infinitive from the chapter of ifta'al and marriage is a infinitive from the chapter of mafa'ala. In jurisprudence and legal terminology, these two words mean a legal relationship that requires the pursuit of pleasure between a man and a woman, as the word "nikah" also means the same, although from the point of view of the word "nikah" it means the union of two people and "nikah" means the cohabitation of the two (Ibrahimi, 1377, 15).

Marriage is a legal relationship that is achieved by a contract between a man and a woman and gives them the right to enjoy each other sexually. In terms of terminology, marriage is a contract between a man and a woman for the unity of life, a contract that is intended for the same contracting parties and the law has not considered a special formula for it (Jafari Langroodi 1378, 104).

Marriage in the civil legal system of Iran is completely derived from Imamiyya law. In this system, marriage is recognized as one of the non-formal rights and is concluded with the offer and acceptance of the parties,

which is a sign of their consent. Also, not registering the contract in the official marriage registry does not affect the validity of the marriage. Similar to other contracts, the marriage contract must also have all the basic conditions for validity specified in Article 190 of the Civil Code. If one of these conditions does not exist, the marriage will not be realized. (Emami, 1377, 268).

After mentioning various opinions on the literal and idiomatic meaning of marriage, the author of Jawaher says: The popular view is that marriage literally means cohabitation and in Islamic law it means contract (Najafi, 1374, 30). Ibn Idris claims that none of the scholars disagree on this meaning, and Ibn Fahd and Sheikh Tusi claim consensus, since the use of this word (nikah) in contracts is common. The author of Tafsir Kashshaf believes that the word nikah does not appear in the Quran to mean cohabitation except in the verse "Even if a couple marries, otherwise," meaning that in all cases, the use of this word in the Quran means a marriage contract. In the above verse, some have taken it to mean marriage, not cohabitation, and have said: The condition of cohabitation for obtaining hiliyah in such a marriage is understood from external evidence, not from the aforementioned noble verse (Zamakhshari, 1415, 548).

In Islam, much importance and emphasis has been placed on marriage. The Prophet of Islam (PBUH) said about marriage: "Whoever marries has completed half or two-thirds of his religion, so he should practice divine piety in the remaining part." He also pointed out that there is no structure more beloved to God than marriage. These recommendations indicate that marriage is a natural thing and in accordance with human nature. Even if a person fulfills all his other needs but is not married, he will undoubtedly feel some kind of deficiency. Experience has also proven that people who have not married are more likely to suffer from nervous weakness, mental fatigue, and lethargy. On the other hand, through marriage, one can achieve true peace, tranquility, and balance. God says in the Quran that one of His signs is that He created for you spouses from among yourselves so that you may find peace and tranquility with them. From this verse, we can conclude that true peace can only be achieved in the light of marriage. Therefore, the foundation of marriage is based on an innate and natural need, and opposing it may bring many problems. These innate desires must be responded to in a natural way, and the most appropriate response to sexual needs based on human nature is nothing other than marriage. (Rashidpour, 2002, 7).

Fundamentals of Personal Status in Iranian Jurisprudence and Civil Law

-1Human Dignity: The Holy Quran introduces the existential structure of man as the best existential structure of the creation system, saying: "We have created man in the best of forms and systems." (Surah 2:4) We have created man in the best form and system. God has created all the gifts of the earth for him and has referred to it in various places in the Quran, where He says: "He has appointed for you... He created for you... He has subdued for you... and We have carried them on land and sea." From the perspective of Islam, man has a high status and value, and God has provided him with the lordship of the creatures of the earth and the sky. The Spirit of God was breathed into Adam and made him worthy of honor and respect, to the extent that He commanded the angels to prostrate before him. He introduced him as His representative and successor on earth: "And when your Lord said to the angels: I am going to place on earth a vicegerent (representative)." (Al-Baqarah 2:30) And the numerous verses that speak of man's conquest of the world of creation and what is on earth all indicate the inherent dignity of the human race.

A verse that explicitly refers to the subject of human dignity is the verse "And We have honored the children of Adam and carried them on land and sea and provided them with good things and preferred them over many of those We created with favor" from Surah Al-Isra, verse 70. This verse clearly states that God has honored the children of Adam greatly, carried them on land and sea, provided them with clean and delicious food, and given them special superiority over many of His other creations. God has given man a special position and special dignity that is unique among all the creatures of the world. In the book Al-Mizan, in explaining the concept of dignity and its difference from favor, it is stated as follows: The meaning of "honor" is to allocate special care and honor to an individual that others do not benefit from. In this sense, honor is an internal concept that is solely related to the person himself and has an independent aspect; In other words, honor and dignity are specific to a person, without any comparison with others. But

"preference" is giving someone priority over another, in such a way that he shares the essence of the gift with others but gains a higher status. (Tabatiai, 1390, 156, 13)

Inherent dignity means that God created man in such a way that compared to some other creatures, he has advantages in terms of existential structure and possibilities, or his characteristics are organized in a more appropriate way. For this reason, man enjoys more blessings and privileges. These privileges actually return to God's special grace for mankind and all humans enjoy it equally. Therefore, no one should boast about having this dignity over other creatures or consider it a measure of his value and perfection, because this dignity is not related to human choice and every human being benefits from it, whether he wants it or not. Human dignity refers to the very concept of being human, meaning that every human being inherently and innately possesses special dignity and has characteristics that distinguish him. On the other hand, his social life necessitates that he enjoy rights and at the same time respect the rights of others. As a result, the basis of a person's personal status stems from his human nature on the one hand and from the laws that govern social life on the other. In the field of law, this dignity can also be understood by carefully examining legal laws. For example, if a person intentionally kills or injures another person, he will be punished with qisas. Also, if someone curses another person, calls him by ugly names, or even insults his parents, he will be punished according to the laws of ta'zir.

-2Freedom of opinion: It is one of the types of social freedoms that stems from the power of thought and the human intellect. From the perspective of Islam, freedom of belief is the natural right of every human being, and everyone can choose any belief and ideology they want with complete freedom. According to the verse "There is no compulsion in religion" (Al-Baqarah 2/256), there is no compulsion in accepting religion. Islam does not impose a belief on anyone. Rather, it invites people to think and be rational, and it does not even accept blind imitation without thinking and reasoning in the principles of religious belief. (Mir Mousavi, 2002, 257)

God created man as a responsible being and has given him intelligence and free will to fulfill this responsibility. If God were to consider a forced belief desirable, He would have imposed it on humans so that all people on earth would believe. But this was not God's will, because He does not accept a belief that arises from compulsion. The Quran states: "If your Lord had willed, all those on earth would have believed; can you compel people to believe?" (Yunus: 99) The Quranic culture, using logic, reasoning, and good argument, invites people to the truth so that after thinking, reflecting, and hearing different words, they consciously choose the best of them. God says in this regard: "Those who listen to every word and follow the best of it, those are the ones whom God has guided and are endowed with clear understanding." (Az-Zumar: 18) Identifying and selecting the superior word and the appropriate belief is only possible when there is an opportunity to express different opinions. Otherwise, conscious and free choice will have no meaning. Therefore, the logic of the Quran emphasizes that religion and belief are not a compulsory category.

The Basics of Personal Status in Iraq Law

The basics of personal status in Iraqi law are based on a combination of constitutional principles, Islamic jurisprudence considerations, and the provisions of the Personal Status Law, and this area of law, more than any other branch, reflects the religious and religious diversity of Iraqi society. The starting point of these basics should be sought in the Iraqi Constitution of 2005. According to Article 2 of the Constitution, Islam is the official religion of the state and is considered one of the basic sources of legislation, and no law should contradict the established rulings of Islam. At the same time, the same article emphasizes the full guarantee of religious rights for all individuals, including freedom of belief and religious observance. This duality, namely commitment to Islam and respect for religious pluralism, forms the theoretical foundation for regulating personal status in Iraq.

Furthermore, Article 14 of the Constitution establishes the principle of equality of all Iraqis before the law without discrimination on the basis of gender, religion, belief or ethnicity, which obliges the legislator to observe a balance between legal unity and religious differences in regulating personal status rules. The most important direct basis for personal status in the Constitution is Article 41, which explicitly states that

Iraqis are free to adhere to their personal status according to their religion, belief, belief or choice, and this must be regulated within the framework of the law. This article is the basis for adopting a flexible system in personal status and recognizes the possibility of applying different jurisprudential rules, at least in principle. At the level of ordinary law, the Iraqi Personal Status Law No. 188 of 1959 is the most important legislative document in this area. Article 1 of this law defines personal status as including issues such as marriage, divorce, lineage, capacity, guardianship, custody, maintenance and inheritance, thus defining its scope. In this law, the Iraqi legislator has tried to create a relatively uniform system that, while benefiting from Islamic jurisprudence, avoids bias towards a particular religion. For this reason, many of the provisions of this law are derived from the jurisprudential perspectives of different Islamic schools of thought, and not solely from Ja'fari or Hanafi jurisprudence.

Article 2 of the Personal Status Law stipulates that in cases of silence or brevity of the law, the judge must refer to the principles of Islamic Sharia in a manner that is consistent with the provisions of this law and its objectives. This article shows that Islamic jurisprudence plays the role of a supplementary source, but within the framework of the codified law and not in a direct and unconstrained manner. Also, Article 3 of the law introduces marriage as a religious and legal contract and states the basic conditions for its validity in the form of legal regulations, which indicates the integration of jurisprudential concepts with the modern legal structure.

In the area of implementing specific jurisprudential rulings, although Law 188 of 1959 has a unitary tendency in principle, but with regard to Article 41 of the Constitution and developments after 2003, the possibility of referring to the jurisprudence of a specific religion, especially Ja'fari jurisprudence for Shiites, has been strengthened in the legislative and judicial practice of Iraq. On this basis, recent legal reforms and proposals have also attempted to give legal legitimacy to the application of personal status rulings based on the religion of individuals, without completely abandoning the principle of personal status law.

The principles of personal status in Iraqi law are based on three basic pillars: first, commitment to Islam as the general framework for legislation in accordance with Article 2 of the Constitution; second, recognition of religious freedom and the right to choose in personal status based on Article 41 of the Constitution; And third, the regulation of detailed rules in the form of Personal Status Law No. 188 of 1959, which, with a consolidated and governmental approach, has attempted to balance the legal unity and jurisprudential diversity of Iraqi society. (Muhammad Saeed Al Saadawi, 2025, 134).

The scope of personal status in Iranian jurisprudence and civil law

The scope of personal affairs means how far its limits and scope are and what cases it includes. As mentioned earlier, personal affairs is a term that has not had much precedent in Islamic jurisprudence. In fact, this term has gradually entered Muslim countries from the laws of Western countries. The introduction of this term has led to it being discussed and examined separately and independently and to the writing of a book on this subject.

The most important topics mentioned in personal affairs include marriage, the status of the property of the husband and wife, divorce, separation, dowry, dower, abbotship, lineage, adoption, capacity, guardianship, guardianship, inheritance, will, settlement of the estate, and stoning. (Jafari Langroodi, 1368, 193) Of course, among the cases mentioned, the issue of separation and adoption does not exist in Islamic jurisprudence, but other cases have been discussed and examined in detail in various chapters of jurisprudence. There is a difference of opinion among jurists as to whether all of the above cases are examples of personal circumstances or not. Some have doubted about dowry, inheritance, will, capacity, gift and endowment. Some of them consider the mentioned cases to be part of personal circumstances and have stated that inheritance is an establishment that has arisen due to kinship between the heir and the testator, therefore its non-material aspect prevails over the financial aspect. (Emami, 2005, 100) In particular, gifts and wills, which are part of charitable contracts, are considered personal circumstances, because the personality of the party to whom the gift or will is made is considered important (Shibli, 2018, 12). In contrast to this view, some are skeptical about the above-mentioned cases being personal circumstances, because the issues mentioned are matters that are related to property, not personality, and

are considered objective matters. (Safaei and Ghasemzadeh, 2008, 13) To identify personal circumstances, issues and issues in which laws have been enacted based on the personality of the individual are considered examples of personal circumstances, while laws that have been enacted based on the nature of the individual are considered examples of objective circumstances.

Personal status is one of the issues that has always had a special place in the legal systems of countries. This concept includes issues that directly affect the personal lives of individuals and has been addressed in various laws, such as laws related to marriage, divorce, adoption, inheritance, and wills. In general, personal status refers to matters that are closely related to the personality and legal status of individuals. In Iran, examples of personal status have been specified based on various legal articles, including Articles 6 and 7 of the Civil Code and Principles 12 and 13 of the Constitution. In these articles, cases such as marriage, divorce, inheritance, legal capacity, and adoption have been raised as prominent examples of personal status. Of course, it should be noted that these examples are not exclusive and are expanded in more detailed cases. For example, marriage, as one of the main examples of personal status, also includes sub-items such as dowry, maintenance, dowry, abbotship, lineage, and custody, some of which may not be explicitly mentioned in the text of the laws. In addition to domestic law sources, international treaties can also play a role in determining the scope of personal status. For example, Article 8 of the treaty between Iran and Switzerland, approved in 1934, considers the scope of personal status to include marriage, property of spouses, divorce, lineage, adoption, guardianship, and other related issues. Similar cases are also mentioned in the protocol to the treaty of amity and residence between Iran and Greece, approved in 1931. Other influential sources in determining the scope of personal status include judicial practice. According to published legal opinions, issues such as marriage, divorce, dowry, lineage, adoption, legal capacity, guardianship, guardianship, and seclusion are considered personal status issues and fall within the scope of family law issues. Also, Article 4 of the Family Protection Law approved in 2012 explicitly states the jurisdiction of the family court to hear claims related to personal status, which emphasizes the importance of this category of issues in domestic law. Finally, it should be noted that the definition and examples of personal status may vary in different systems due to cultural and legal differences. These differences reflect national and international sensitivities surrounding this legal issue that has a direct connection to the daily lives of individuals.

-1Engagement and damages resulting from its dissolution 2- Permanent and temporary marriage and permission for marriage 3- Conditions in the contract 4- Remarriage 5- Dowry 6- Mahriyah 7- Wife's maintenance and equivalent remuneration during the marriage 8- Tameek and Nashuz 9- Divorce, revocation, annulment, and dissolution, granting of term and expiration 10- Custody and visitation of a child 11- Lineage 12- Growth, confinement and its lifting 13- Forced guardianship, guardianship, matters related to the supervisor and trustee of the property of the incapacitated and will in matters related to them 14- Maintenance of relatives 15- Matters related to the absent and missing 16- Guardianship of unaccompanied children 17- Embryo donation 18- Gender change Note: The claims of individuals subject to Articles 12 and 13 of the Constitution As the case may be, the law allowing the observance of the personal status of non-Shiite Iranians in courts, approved on 31/4/1312, and the law for examining lawsuits filed regarding the personal status and religious teachings of Zoroastrian, Kaleem, and Christian Iranians, approved on 3/4/1372, are examined by the Expediency Discernment Council of the regime.

The scope of personal status in Iraq law

The scope of personal status in the country of Iraq refers to these issues:

-Which are rulings related to the status of the endowment and the conditions of its position against them and their size and rights, the quality of the endowment administration, supervision and guardianship of the endowment and the conditions of the guardian, his dismissal and accounting.

-Also, rulings related to status such as being male or female, married or single, dead or alive, missing, absent, guardian or guardian under the guardianship and guardianship of another.

-Other, issues related to capacity and its effects such as being minor or incompetent, being permitted in some possessions or not, being insane or mentally ill or stupid, heedless, stoned, lifting of stoned, as well as growth and the quality of proving growth.

-Rulings related to the proposal and the conditions of marriage, the pillars of marriage, the capacity of the spouses, the necessary regulations for registering marriage and the rulings related to proving marriage.

-Also, specific issues of family law such as the duties of the spouses towards each other, dowry, and alimony of the wife.

-Rulings related to the dissolution of marriage, specific rulings on divorce and its conditions, separation due to disability or lack of reconciliation or lack of spending, rulings related to khula and their effects such as necessity or iddah or lack thereof, as well as the rights associated with it.

-Issues related to lineage and the necessary conditions and its proof, acknowledgement of childbearing, acknowledgement of paternity or maternity, and other areas of kinship.

-There are rulings related to nursing and custody, as well as the necessary conditions of the guardian and the remuneration and the duration of custody and its termination before the end of the term.

-And the other is that there are rulings related to guardianship, wills, the rights of guardians and executors and their dismissal, the permission of the executor, as well as rulings related to possessions after death, the quality of transferring the estate to the heirs and the conditions of transferring and determining their shares. (Naji, 1962, 28) Thus, it can be said that issues that are related to the person and are formed around the axis of the social characteristics of the individual can be considered within the scope of the realm of personal circumstances.

The scope of personal status in Iraqi law is primarily determined in the Personal Status Law No. 188 of 1959 and is supported by the 2005 Constitution, and encompasses a set of legal relations related to the personal and family status of individuals. The Iraqi legislator has attempted to define this scope in a relatively comprehensive manner to both respond to social needs and be consistent with Sharia principles.

According to Article 1 of the Iraqi Personal Status Law, matters related to personal status include marriage, divorce, separation (judicial separation), lineage, capacity, guardianship, will, guardianship, custody, maintenance, absence, missing persons, and inheritance. This article, as the most important legal text, outlines the general framework of the scope of personal status and shows that the Personal Status Law encompasses not only marital relations, but also the legal status of persons lacking or lacking capacity, as well as the financial and non-financial effects arising from family relationships.

In the area of marriage, Articles 3 to 10 of the Personal Status Law are devoted to the conditions for concluding a marriage, the capacity of the spouses, consent, obstacles to marriage, and the official registration of marriage. It follows from these provisions that marriage in Iraqi law is not simply a religious relationship, but a legal relationship whose effects are recognized only if legal formalities, especially official registration, are observed. Therefore, the regulation and control of marital relations constitute an important part of the realm of personal status.

Divorce and dissolution of marriage are also another essential part of this realm. Articles 34 to 48 of the Personal Status Law deal with the types of divorce, the conditions for its realization, the legal effects of divorce, the waiting period, and the financial rights resulting from the dissolution of marriage. In addition to divorce, the institution of judicial separation, which is realized in special cases and by court order, indicates the direct intervention of the state in the regulation of family relations within the framework of personal status.

Lineage and its effects are also within the realm of personal status. Articles related to lineage, the legitimacy of a child, proof of lineage, and its legal effects determine the position of a child in terms of family rights and obligations. These provisions are directly related to the issues of custody, maintenance and

guardianship and show that personal status is not limited to the relationship between spouses, but also broadly encompasses the relationship between parents and children.

The capacity and protection of incapacitated persons is another important part of the scope of personal status in Iraqi law. According to the articles governing capacity, individuals are assessed in terms of age, intelligence and maturity, and in the event of lack or deficiency of capacity, institutions such as guardianship, guardianship and trusteeship are applied. These provisions, which are reflected in various articles of the Personal Status Law, show that protecting legally incapacitated or disabled persons is one of the main objectives of this branch of law.

Custody and maintenance are also explicitly included in the scope of personal status. In the articles related to custody, the legislator has specified the duty of maintaining and raising the child and the priority of the entitled persons, and in the articles related to alimony, the husband's financial responsibility towards the wife and children and the conditions of entitlement to it have been stated. These regulations show the link between the non-financial and financial aspects of family relations within the framework of personal status. (Siham Hameed Majeed, 2025, 78)

Inheritance, as one of the most important effects of the personal status of individuals, constitutes the final part of the scope of personal status. Article 1 of the Personal Status Law explicitly includes inheritance among the subjects of this law and considers the rules related to inheritance, inheritance shares and inheritance conditions to be subject to this system. Although some inheritance regulations have been reflected in other laws, its main basis is still within the framework of personal status.

In addition to the Personal Status Law, Article 41 of the Iraqi Constitution has also strengthened and expanded the scope of this area by recognizing the freedom of individuals to adhere to personal status based on their religion, belief or belief. Thus, the realm of personal status in Iraqi law.

Conclusion

Personal conditions is a term that first arose from Italian law and was used in their terminology, and they divided civil law into two parts, relations between persons and property, and they called the first part personal conditions and the second part material conditions. Some have also said that it entered the Persian language through the translation of French terms. This term entered Islamic jurisprudence in the late nineteenth century in the book *Al-Ahkam al-Shari'ah fi al-Ahwal al-Shari'ah* written by Muhammad Qadri Pasha. It has been suggested that in Shiite jurisprudence, Sheikh Yusuf al-Faqih, the then head of the Ja'fari High Court of Sharia in Beirut, first used this term in his book. After that, this term gradually became popular. , but its examples have already been mentioned in Islamic jurisprudence. In relation to the inherent rights of Iran, the civil legislator has used this term for the first time along with its examples. And in Articles 6 and 7 of this law, Iranians are subject to their own laws in their personal affairs, and foreigners are subject to the laws of their respective states. In the Constitution, which was ratified in 1358, this issue is mentioned in the twelfth and thirteenth principles. Some of the topics that are discussed today under the title of personal affairs, such as citizenship, are completely new, and the issues related to it must be sought in the foundations of jurisprudence, otherwise, given the lack of privilege and demarcation among humans in jurisprudence, these discussions have no place as personal affairs. But today, one of the most important topics of human personal status that shapes human identity is an issue such as homeland and citizenship. Among the examples and topics of personal status, marriage, divorce, will and inheritance are more prominent than other examples. And of course, it will have many effects on human life. Including marriage, which, if concluded, forms a marital relationship between the parties. And it obliges the parties to perform a series of duties and obligations towards each other. And even in the event of separation and divorce, they will be required to observe the rules related to it. And in the will, a person must also observe the rules related to it, such as the fact that the will must be in a third of the property, and in more than that, it must be with the permission of the heirs. And in the inheritance of individuals through cause or lineage, it is realized if, despite all the conditions, there is no obstacle such as infidelity, murder, etc. in the enjoyment of it and other effects that follow.

A comparative study of personal status in the laws of Iran and Iraq shows that this area of law is particularly sensitive and complex due to its direct connection with the family, marriage, divorce, custody, dowry, inheritance and will. The nature of these laws in both countries was formed under the influence of Imami jurisprudence and the principles of Islamic Sharia and mainly supervises the family order and hierarchy, lineage, gender and the status of family members. This approach has caused many individual rights and gender equality to be limited in some provisions or dependent on religious and traditional conditions.

In Iran, the civil law has regulated family issues in detail. One of the prominent points of these laws is the right of men to divorce; A man can unilaterally divorce, while a woman can only request a divorce in certain circumstances, such as hardship, non-payment of alimony, or conditions of the contract. Women's share of inheritance and dowry is lower than that of men, and after children reach a certain age, custody rights are mainly transferred to the father. In addition, legal loopholes and ambiguities related to temporary marriage, conditions of the contract, and financial and custody effects lead to judicial disputes and lengthy cases. This situation indicates the need for legal reforms and clarification of regulations to better protect the rights of women and children. In Iraq, personal status laws originate from Law No. 188 of 1959, to which the recent 2025 amendments have made important changes. Among these changes is the possibility for couples to choose to apply Ja'fari jurisprudence or other jurisprudence. These reforms have provided flexibility in the implementation of family laws and their adaptation to individuals' religious beliefs, but at the same time have led to judicial complexity, differences in interpretation of laws, gender discrimination, and human rights concerns. Challenges such as the division of alimony, inheritance, custody rights, and determining the age of marriage still face ambiguity in practice and require clarification and the development of clear implementing regulations.

A comparison of Iran and Iraq with European countries such as France, Germany, and Italy reveals fundamental differences. In European countries, personal status is regulated based on secular civil law, equality of men and women, freedom of choice, and child protection. The right to divorce is equal for both parties, dowry and alimony are determined by agreement or court order, and inheritance is carried out without gender discrimination. Courts play an active role in protecting children's rights and preventing discrimination, and the laws of these countries are in line with international human rights standards and global conventions. This comparison shows that although Iran and Iraq have a clear legal framework, the religious and jurisprudential nature of the laws has led to legal and social restrictions in the area of gender equality and individual rights.

Common challenges in Iran and Iraq include legal ambiguity and gaps, gender discrimination, the influence of custom and jurisprudence on individual rights, and the lack of legal protections for women and children. To address these challenges, several legal reforms can be proposed: reforming and clarifying marriage and divorce laws, ensuring women's financial rights and custody, setting a clear minimum age for marriage, developing precise implementing regulations for dowry and inheritance, and training judges.

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