

ADOPTION AND ANNEXATION BETWEEN SHARIA AND IRAQI LAW

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A B S T R A C T	K E Y W O R D S
<p>This paper aims to clarify the traditional or common social aspects known in ancient Arab societies, especially Iraqi society, which are in contact with what the necessities of individual interests of those societies require, as well as what the necessities of the groups in them require, and how they influence the formation, development, and growth of those groups and the building of their beliefs, values, and principles. Discussing the role of these social manifestations in their relationship with the basic needs of society, especially their role in forming the family, which is the basic building block for the formation of society.</p>	<p>Social manifestations, ancient societies, Iraqi society, annexation.</p>

Introduction

Adoption is considered one of the well-known social manifestations in ancient societies, which was necessitated by the interests of individuals and the group. It fulfills one of society's main needs, which is providing children for childless families. In ancient Iraqi society, the individual had the right to adopt any number of male or female children according to a written contract. On the condition that he fulfills his obligations towards them, and these obligations are determined by laws, and referred to by many contracts found by researchers and archaeologists specialized in ancient Iraqi civilization. The motives for adoption are not limited to the natural causes of childlessness and infertility. Rather, there are social reasons such as preventing certain types of beings in ancient Iraqi society from having children. In addition, many families aimed to adopt children to obtain technical labor as a result of training. These children have been around since childhood. On the other hand, there are reasons that push many old Iraqi families to give their children for adoption, foremost of which is the deteriorating social situation of many families, through which they aim to have their children live with fenced families that provide them with livelihood and education, and guarantee their future, as they wished to Its children learn some professions and handicrafts that benefit them and their original families. In this research, we will try to explain the concept of adoption and its purpose in ancient Iraqi society and point out some of the laws that dealt with it. We will also touch on its general rules and provisions, explain its conditions and forms, and finally conclude by referring to the annulment of the adoption contract and its effects on the two main parties of the relationship, namely the two parties. And the adopter. The concept of adoption and its purpose in ancient Iraqi society: Adoption is a legal system that aims to imitate nature by creating paternity artificially in order to arrange effects similar (between the adopter and the adopted) to the

relationship that arises as a result of birth between the father and his offspring. This system was a template into which legal actions intended to change family relations and the personal status provisions related to them could be poured. The concept of adoption means creating a filial relationship between a man or a woman with a boy or a girl, and this is done through a legal contract that stipulates that both parties to the contract agree on the new relationship that binds one of them to the other. The new relationship includes rights and duties for both parties as stipulated in the adoption contract, and the Babylonian word that means adoption. As mentioned in contracts and articles of law, it is (Marutum). Since ancient times, the family has been based on a solid foundation of marital unity, and marriage was its pillar. Every man had one wife, or more. The primary goal of the ancient Iraqi family was to have children and leave offspring that would last for generations, as every individual had the right to be He has a son, and the reason for this is many things, including: the emotional nature towards offspring, as well as the religious and economic reality, considering the son is the legal heir of the family, as it gives reassurance to the souls of the parents.

Theoretical framework

The concept of annexation and the conditions for implementing it

The concept of inclusion and the concept of generous lineage

Dhamm linguistically: joining one thing to another, and I joined so-and-so, that is, I stood with him in one matter[2]. Or of unknown parentage to a married couple who submitted a joint application to the Juvenile Court and who meet the conditions stipulated in the law.

Orphan: is (a young person who has lost his father or parents and has not reached the age of majority). (As for the term of noble parentage, it is a child of unknown parentage, and in a major humanitarian step that would reduce the negative social repercussions that a child of those known as “unknown parentage” may be exposed to. The Child Welfare Authority in the Ministry of Labor and Social Affairs decided to give this name (Karim al-Nasab).

The second requirement (conditions for annexation in Iraqi law)

In recent days, the media has circulated real-life stories about orphaned children or children of unknown parentage who were left alone to face the hardships of life and the many problems of society. The Iraqi legislator has regulated the provisions and rules regarding annexation in the Juvenile Welfare Law No. (76) of 1983 currently in force, and devoted Chapter Five of Chapter Three of the aforementioned law to it.

First: Conditions for annexation. Iraqi law stipulates a set of conditions for annexation of an orphan or unknown child, namely: The applicants for annexation must be Iraqis. The establishment of a marital bond between them. They are known for their good conduct.

They are sane and free from infectious diseases. Their ability to support and raise the child.

They must have good faith.

Second: Procedures for requesting annexation: Iraqi law regulates the annexation procedures that must be followed to issue the annexation decision, which are as follows: Those requesting annexation must submit a joint application to the Juvenile Court.

The child to be included must be an orphan of parents or of unknown parentage. The Juvenile Court must verify that the conditions for inclusion mentioned above are met. Issuing the annexation decision

on a trial basis lasting six months, which may be extended for another six months. Sending a social researcher to the couple's home at least once a month, and submitting a report thereon. Issuing the annexation decision after the expiry of the trial period if it is found that the child's interest is met.

Third: The obligation of the spouses. In Article (43) of the aforementioned law, the Iraqi legislator imposed a set of obligations on the spouses that they must abide by and abide by. These obligations are: spending on the child. The legislator here specified the period of spending. For the female, the spending continues until she gets married or until she works.

As for the male, the expenses are given to him until he reaches the age at which he earns the same income, but if he is a student, the expenses are paid to him until he obtains at least the preparatory certificate.

However, if he is unable to earn a living due to a defect in his body or a defect in his mind, then expenses will be made on him until he is able to earn.

Bequeathing a share of the estate to the minor: Article (43/second) of the aforementioned law requires the spouses to bequeath a share of their estate after death. The legislator intervened and determined this share to be equal to the share of the smallest heir. The legislator also stipulated that this share not exceed one-third of the estate. Here a question arises: to what extent is it permissible for the spouses to revoke this will?

The answer to this question is in the negative, as the legislator in the aforementioned article did not permit the spouses to revoke this will. Fourth: The religion and religion of the minor of unknown parentage. It is not forbidden for the Iraqi legislator to include a special provision regarding the religion and nationality of the minor of unknown parentage. The text of Article (45) of the aforementioned law came to clarify the final ruling on this matter. The religion of the child, whose parentage is unknown, is Islam. As for his nationality, it is Iraqi. It is necessary to point out that the legislator did not make this presumption definitive, that is, he left the door open to prove otherwise. Someone may acknowledge the child's parentage, and thus the child's nationality and religion are determined according to these developments. These are the most important and prominent provisions and rules related to the inclusion of a child who is an orphan of parents or of unknown parentage in Iraqi law. It remains for us to point out a very important issue, which is that the Ministry of Labor and Social Affairs announced in October of 2016 the conditions for the inclusion of children of noble parentage, and in the process of this The conditions announced by the Ministry, and when weighed with the balance of legality, we find that some of them were in violation of the provisions of the Juvenile Welfare Law, and the reason for the violation is evident in the fact that these conditions were issued by the Ministry, while the law is the highest and must be applied, and the instructions and regulations issued by the Ministry must be facilitating To implement the law, not to violate it.

Social, legal, and legal opinions

The positive phenomenon today in Iraqi society is the return of the spirit of solidarity among people, as people have begun to show a high desire to cooperate among themselves instead of relying on state projects, which have begun to fluctuate between negative and positive, as the adoption of orphaned and poor children by families has proven It was a great success compared to the successes in shelter centers, where the feeling of alienation is prevalent among children. However, in Iraq there are still social and legal obstacles that prevent families from being encouraged to adopt children whose means of living have been cut off as a result of the loss of their fathers and mothers, in security conditions marred by

killing and displacement. In one of the care homes in Baghdad, Abu Amer from Diyala Governorate was hesitant to place the children of his brother, who went missing in armed action in 2008, due to his inability to provide for their livelihood, and his wife's desire for them not to stay at home. However, he hesitated to do so due to many social and psychological factors, including Society will look down on him for abandoning his nephews while they are in distress, but Abu Amer, who does not have a fixed income and lives on goods that he spreads daily on the sidewalk, is thinking of another solution, to have another family adopt them, and Abu Amer's story is similar in its details to other stories. It is repeated daily in the various cities of Iraq, when those in charge refuse to place children in orphanages, for fear of what people say, and if the matter leads to their homelessness on the streets, the culture of shame prevents the registration of children, but at the same time it does not view their homelessness as an anomalous case, carrying many Trouble. On the contrary, the phenomenon of Iraqi families adopting children in foster homes is increasing, with many requests from families wishing to adopt children, especially those families deprived of children.

Umm Ghufra submitted a request to the Baghdad court in order to complete the official procedures for adopting the child, Shatha, whose parentage is unknown, after she lost her parents. Iraqi law allows the adoption of children provided that families have an appropriate level of income that qualifies them to care for the adopted child. The law also requires that the husband and wife be of Iraqi nationality.

Five million orphans

The social researcher at one of the care homes (Umm Salem) says: There are about 2.5 million orphan children in Iraq, and that this number exceeds the capabilities of the Iraqi state. However, international reports indicated in their last statistics in 2011 that the number of orphans in Iraq reached about five million children, or 16% of the population. In 2009, the government opened a project to qualify cadres for organizations working in the field of caring for and sponsoring orphans in Iraq. The number of orphanages in Iraq is nineteen, four of which are in the capital, Baghdad, and the rest are in the governorates. A former official in child care homes: These factors were the reason that many care homes are still below their maximum capacity due to social isolation. He continues: Families, philanthropists, prefer to adopt children over orphanages. He points out that since 2003, the phenomenon of homeless children and orphans has increased, as has the number of philanthropists who include children, but despite their numbers, their numbers remain small compared to the huge number of orphans and homeless people in Iraq, which is unfortunate.

He adds: The Iraqi Ministry of Human Rights announced in 2011 that Iraq now contains the largest percentage of orphans in the Arab world. She confirmed that the number of orphans in Iraq began to increase in recent years as a result of the violence and murders that affected hundreds of thousands of Iraqis and orphaned and displaced millions of children. Among the directives and proposals is to increase the number of orphanages.

As for the social researcher (Ahmed Ali), he has another opinion on the subject of adoption, as he said: The issue of age is an important issue in adoption, since if the child is young, his personality can be built however the adopters want, and he can be raised in the way they want in terms of transmitting ideas and principles. Which grows with this child and makes him an ideal image, as the child observes and imitates what the parents do, and here the adopter can raise the child he has adopted in the way he desires. The best way to adopt is for the child to keep his real name, acknowledge his real parents, and make him understand that he is in his second family, and that he is on his way to becoming a member of this family. I believe that adopting children is better than adopting adults because it makes it easier

to control the child, and his choice must be careful and careful. After knowing his family, if his parentage is known, and if his parentage is unknown, this does not affect his upbringing, since the human being, as is known, is affected by the social reality that reflects negatively or positively, and therefore he is affected by those who live with him and influence him, and there is no relationship to the parents who gave birth to him, and this Socially and medically stable. Social researcher Kawthar Samir, for her part, considered the issue of the sincere desire of those who want to adopt very important for the success of this process, and she said: When the desire arises among couples who have been married for many years and have not been able to have children for many reasons to have a child, so they think about adoption. However, one of the spouses may feel that they may not love the one they have adopted as much as they love the child they have, but these doubts quickly dissipate as they see the child becoming an important part of their family, especially when the woman feels that adopting this child is much easier than the exhausting process of childbirth. The researcher confirms that psychological preparation is important for those who want to adopt, as the couple must be prepared to embrace this child and be able to raise him and manage his affairs in the best possible way.

Legal Opinions

Cancellation of the annexation decision upon breach of the pledge

We visited one of the courts in Dhi Qar, and we met one of the judges who preferred not to mention his name, and we asked him about the issue of joining children, or (joining), and the mechanism by which it takes place. He replied, saying: There are many measures that must be taken to join children, so the spouses must come forward. By joint request to the Juvenile Court to include a child, an orphan of parents, or whose parentage is unknown. The Juvenile Court, before issuing its decision on annexation, must verify that the two applicants for annexation are Iraqis, known to be of good conduct, sane and free from contagious diseases, capable of supporting and raising the child, and that they have good faith. After that, the Juvenile Court issues its decision to include the child on a temporary basis and for a trial period of six months, which may be extended to another six months. During this period, the court sends a social researcher to the spouses' home at least once a month, to verify their desire to include the child and their care for him. He submits a detailed report to the court. He adds: If the spouses or one of them rescinds their desire to include the child during the trial period, or if it becomes clear to the juvenile court that the child's interest is not being fulfilled in that regard, it must cancel its decision to include the child and hand over the child to any social institution prepared for this purpose, and if the juvenile court finds after the expiration of the trial period The child's interest is fulfilled by the spouses' firm desire to include him with them. The court issues its decision to join them, and the lineage of unknown parentage is acknowledged before the Juvenile Court in accordance with the Personal Status Law. The child of unknown parentage is considered an Iraqi Muslim, unless proven otherwise, and then the juvenile court must send a copy of the Its decision to annex or acknowledge the lineage to the Directorate of Nationality and General Civil Status for registration in its records.

Juvenile Welfare Law No. 76 of 1982

The judge added: There are many obligations imposed on the applicants for addition towards the child, which are spending on the child until the female gets married or works, and until the boy reaches the point where he earns like him, unless he is a student or unable to earn, perhaps there is a defect in his body or a defect in his mind. In this case, spending on it will continue until the student obtains a

preparatory certificate as a minimum when he reaches the age that qualifies him to obtain it, or until the incapacitated person becomes able to earn and bequeath to the minor an amount equal to the share of the smallest heir, provided that it does not exceed a third of the estate, and it is obligatory and may not be withdrawn. about her. This is what was stated in the Juvenile Welfare Law No. 76 of 1982 and its amendments, and according to the judge's opinion, joining in Islam is not permissible, as it is not permissible to join people with known lineage. What happens is that the child is taken from his known family and given to another, and registered and attributed in their name, and this is not permissible, which causes There will be many social problems in the future, and here comes the role of the court in denying and proving paternity. If there is a birth statement issued by a hospital, it is not possible to change the child's lineage to the new family, because the birth statement is evidence of his original parentage. However, if the birth was at home by a midwife Authorized, there is a proof of birth, and here the lineage is changed because there is no evidence of the child's original lineage. If the parents come and acknowledge that this is not their child and it is the child of the other family and everyone acknowledges that, then a ruling is made denying the child's lineage and his lineage to the other family according to the testimony of witnesses.

The Iraqi Civil Code does not contain a text defining the concept of adoption

Lawyer Tariq Mahdi Qandil believes that there is no text in the Iraqi Civil Code that defines the concept of adoption in its known form as in the laws of other countries, especially European ones. The reason for this - as he says - is because most of the provisions of the Iraqi Civil Code came from Islamic Sharia, the Hanafi school of thought, and its reliance on the Code of Islamic Law. The Ottoman judicial rulings and the guide to the Hiran of Qadri Pasha, in contrast to the European laws that considered adoption and unnatural children a normal matter stipulated in those laws, and the Iraqi civil law dealt with the issue of legal filiation, guardianship, and other duties between parents and children and people for whom the nationality and status of the foundling are not known, and all of this. Regarding the issue of Iraqi nationality. Although adoption in Islam is not possible, in social life some people resort to it, who do not have children, so they take the child from the hospital or shelter and adopt him as their child, and register it in their name, which creates many social problems. There are general rules that define the frameworks for adoption, including that it be The adoptee must be of a certain age and be able to support the adoptee, not have any legitimate children at the time of adoption, be of good conduct, and satisfy the other spouse. These are the conditions for the adopter. As for the adoptee, he must be a minor. An adult may be adopted provided that he is younger than the adopter. It is also not permissible to adopt more than one person unless the husband is married to two wives. Adoption occurs through an official contract drawn up in the presence of both parties and ratified by the court. The adoptee inherits the adopted person. It is permissible to challenge the procedures and the inheritance that the adoptee has by those who have an interest in it, such as the adoptee's brothers and sisters or someone who has an interest in the adoptee's inheritance, especially after his death. Adoption does not remove the adoptee from his original family if his lineage is known and he remains the bearer of his real family name. He is not deprived of his rights in it, and the adopter has the right to discipline and raise those who adopted him and the right to approve his marriage. The adopted person has all the rights stipulated in inheritance unless someone who has an interest in denying the adoptee's lineage challenges it.

Legitimacy

To find out the opinion of Islamic law on the issue of adoption, we first met with Mr. Saleh Al-Haidari, head of the Shiite Endowment Office, who answered us on the subject, saying: If what is meant by adoption is for a specific family to raise a child who is an orphan of parents, or for any other reason, and to provide him with assistance in life matters until he becomes He is able to bear the burdens of life himself, so there is no legal objection to that. As for the legal obstacle, it is when this child is registered in the name of the family that adopted him, and the legal rights that result from this registration are like any heir to this family. This matter is absolutely not permissible, and it is not permissible to attribute this child to his family. To a father other than his legal father or to a mother other than his mother. Therefore, there is no objection to caring for and raising children, with an important note, which is the legal issue within the home for the boy and the girl as well. This means that when the boy reaches the age of majority, the woman who raised him must wear the hijab when she sees him, and likewise the girl must wear the hijab in front of the man who raised her. All schools of thought believe that it is not permissible for this person to be considered a son of this family unless he is a descendant of the father. In all legal matters, this person cannot be attributed to the family that raised him, but it is possible to provide assistance or a gift to him by registering the adopter in his name for money, a house, or something. Likewise, as for Mahmoud Al-Falahi, the official in the office of the head of the Sunni Endowment Office, he answered our question regarding adoption, saying: Since Islamic law respects childhood and calls for the preservation of children, there is nothing wrong with a child for any reason joining one of the families wishing to care for him and provide him with assistance. In life, without being registered in the name of that family, but rather attributed to his real family, we have evidence of this in the case of the Messenger in the incident of Zaid, where the clear Qur'anic text came from Surah Al-Ahzab, verse 40 (Muhammad was not the father of any of your men, but the Messenger of God...) He did not say that Zaid was the son of Muhammad, despite the Prophet's upbringing of Zaid from a young age. Likewise, what was mentioned in verse (5) of Surah Al-Ahzab (Call them by their fathers, that is fairer in the sight of God. If you do not know their fathers, then they are your brothers in religion and your servants...). As for the issue of inheritance, he has no right to inherit, but rather the person who took care of him and raised him has the right to make a will for him. With money that helps him live in dignity. When we asked him about the possibility of the adoptee marrying the girl he adopted, he replied: There is no legal objection to the adoptee marrying the girl he adopted, because there is no relationship between them that would prevent him from marrying her.

To find out the opinion of the Christian religion on the issue of adoption, we met with the Christian cleric Khaled Esho (Chaldean Church), where he explained that adoption is permissible in Christianity, as the adopted child is like a real son, and is registered in the name of the family that adopted him, so there is no harm in that in the Christian religion. The adopted person follows the Christian religion, that is, the religion of the family that raised him. As for inheritance, this follows the status of the adopted family. If the family has females and he is the only child among them, he is given the same status as the females. However, if the adopted person is the only one in the family, he is given either a quarter of the estate. Or half of it if he is a respectable person who is loyal to his family that adopted him. However, if he is not loyal to the family that cared for and raised him, he is not given anything from the estate, and it goes to other heirs in the family. But the important issue is that it is not forbidden in Christianity to register an adopted child in the name of the family that adopted him, just as it is not permissible to marry a female who is being raised by the adopter at all, unlike Islam.

Victim Children

Most children who are orphans or whose parentage is unknown are victims of conflicts and armed actions, and some children remain without a breadwinner due to their families being arrested or abandoning them for economic or social reasons. You also notice in children's homes many children of unknown parentage who were picked up from the streets. Wassan Ismail, a social researcher in one of the orphanages, says: "We have two children who had marks on their bodies, and they were infants after they were thrown into garbage dumps. Perhaps this constitutes evidence that their parents live in the neighboring area and that they know that their children will be placed in orphanages, so this was done." Tattooing them with certain signs, in order to trace them in the future, which is a strange thing. Wasan points out that developing orphanages and spreading the culture of adoption block the way for hidden gangs seeking to smuggle children and transfer them from Iraq to another country. According to Wasan, despite the wars and tragedies that Iraq has gone through, the phenomenon of kidnapping children and selling them or trafficking them has not reached alarming levels. What happened were individual cases, or cases that alternated from time to time due to the strong social ties in society, which is still fine, according to Wasan, who concludes her talk by noting that the United Nations Children's Fund (UNICEF) announced that 872 Iraqi children were killed and more than 3,200 were injured. As a result of violence that occurred in Iraq between 2008 and 2010. She pointed out that reports issued by the Iraqi government stated that 376 children were killed and 1,594 injured as a result of violence that occurred in 2008, and 362 were killed and 1,044 others were injured in 2009. She pointed out that 134 children were killed and 590 others were injured as a result of violence that occurred during the first nine months of 2010. The death toll of children during the past three years represents approximately 8.1% of the total victims killed in three years. The international organization stressed in its report that it remains concerned about the indiscriminate violence that continues to violate the rights of children in Iraq, and stressed that it continues with its partners to monitor violations against them, including recruitment, killing, mutilation, kidnapping, sexual assault, and attacks on schools and hospitals, which are behind organized gangs. The vast majority of orphaned children in Iraq, which has witnessed several wars in recent decades, including the American invasion in 2003, suffer from a lack of services in general, including the need for education supplies, health services, and other life necessities.

Recommendations

- 1-Working to increase orphanages and increasing interest from before interested in that.
- 2-There must be real individual and community awareness of this situation Humanity that has spread recently.
- 3- Addressing cases with humanitarian organizations and finding solutions for them.
- 4-Orphans and people of unknown parentage are exposed to exploitation by organized gangs.
- 5- The law must be tightened against violating any instructions that would hinder the work of humanitarian organizations.

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 7. Article (111) of the Iraqi Constitution of 2005 stipulates (oil and gas are the property of all the Iraqi people in all regions and governorates).

8. Article (50/Second - 2) of this law stipulates (if the dispute is not resolved through negotiations, both parties may submit the dispute to arbitration).
9. Article (50 / Second - 3) of this law stipulates (any arbitration between the minister and the authorized person shall be conducted by agreement of both parties and in accordance with one of the following rules: - A - The Washington Convention of 1965).
10. Article (27/First) of this law stipulates: "Disputes arising from the application of this law are subject to Iraqi law and the jurisdiction of the Iraqi judiciary."
11. Article (25/1) stipulates: "The powers of the Center shall extend to any legal dispute arising directly from an investment between a Contracting State (or one of its constituent divisions which that State appoints to the Center or its agencies that it appoints)."
12. The agreements of the Iraq Oil Companies of 1920, Mosul Oil of 1932, and Basra Oil of 1938 were stipulated.
13. Article (4/37) of this contract stipulates: "Disputes arising from or relating to this contract must be settled finally..., in accordance with the arbitration rules of the International Chamber of Commerce by three arbitrators appointed as a layer according to the aforementioned rules."
14. Article (33) of the Arbitration Rules of the United Nations Committee stipulates international trade law.
15. A stipulation upon technical service with the Airab Company for the year 1968 in Iraq stipulates: "...the arbitration shall be conducted according to the rules and procedures set by the President.