Balancing Law and Justice: Resolving Inheritance Law Conflicts between Iraqi Federal and Kurdistan Regional Legislations

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Abstract

This research examines the conflict arising from the differences in legal texts between the existing Iraqi Personal Status Law and the frequently amended laws in the Kurdistan Region. Furthermore, the issuance of amendments by the Kurdistan Region has exacerbated this conflict, leading to confusion and disputes between the two legal frameworks. The uncertainties surrounding the rationale behind these amendments have raised questions and doubts among legal practitioners and researchers, prompting a conservative approach within the courts. This study addresses and resolves these uncertainties by employing a comparative and analytical methodology. With a focus on constitutional and legal standards and the principle of justice, the research aims to clarify the applicability of either law. By undertaking this comprehensive analysis, the study endeavors to eliminate perceptions of ambiguity and hesitation, thereby contributing to a more cohesive legal landscape in the region. The research results show the fundamental difference between the Iraqi Personal Status Law and the amended law in the Kurdistan Region in matters of inheritance, specifically centered on the obligatory will and the wife's inheritance, and the Kurdish legislator made amendments in both issues, considering that amending federal laws is guaranteed to the regions by constitutional texts as long as they do not conflict with the constant provisions of Islam and the principles of democracy. This is not considered a departure from the 2005 Iraqi constitutional framework because the Federal Supreme Court, in its capacity as supervisor of the constitutionality of laws.

Keywords: legislation; personal status law; kurdistan region; inheritance law
Introduction

The independence of the Kurdistan Regional Government to issue and amend laws resulted in differences between the amended laws and the law in force in the Iraqi federal government in reality and application. Among these differences was the difference in personal status laws between the two sides, especially about wills, duties, and inheritance, specifically the wife's inheritance. The will and obligatory will for brothers and sisters who are related to relatives, the children of brothers and sisters from the mother, and those who differ in religion between spouses. These topics will be discussed as required by the implications of the text and the differences in views and concepts, away from advocating the interpretations and opinions of certain parties and adhering to the neutral approach to determine the ruling closest to the texts.

The constitution, its teachings, and the law are first presented according to recognized standards, and this study is considered a severe step to solving part of this issue. I reviewed previous studies and was content to mention the ones closest to what I did in my studies. For example, Hadi Aziz limited himself in disagreement to saying the disputes between the schools of Islamic law concerning the will before experimentation. However, the law did not come out due to the schools of thought regarding withholding grandchildren from their father's share of their grandfather's inheritance income. In his study, Talib Abdel Wahed limited himself to the differences between the Sunni and Shiite schools of thought regarding the wife's share of the inheritance and that the prevailing trend in the Shiite school of thought deprives the wife of lands and real estate of her husband's estate, unlike the Sunni schools of thought, which dispose of all the estate as one package, and the wife has a share of all of her husband's estate.

Muhammad Al-Taweel limited himself to addressing the subject of the partnership between spouses that is concluded after the marriage contract is based

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on a work partnership in his study. They have what they earn in proportion to the value of the work of one of them. The researcher considered the woman to be a partner with her husband in proportion to what she served, and he contented himself with referring to the fate of the money acquired before death.\(^5\) In his research, Haider Hussein Al-Kadhim Al-Shammari only addresses the reference to the wife's entitlement to the only home left by her husband after his death, provided that the wife does not independently own a residential home.\(^6\) In his book, Hadi Muhammad exposed Iraqi legislation's shortcomings in only mentioning the first class of grandchildren, even though the justifications for its obligation exist in the second, third, and other classes. About the wife, he contented himself with mentioning the wife's entitlement from her husband's estate in the event of a difference of religion in the obligatory will, which is in a few lines.\(^7\)

It is clear from the above that previous studies did not address the axis of disagreement regarding inheritance, the point of differentiation between the amended law in the Kurdistan Region and the Iraqi Personal Status Law, and the extent to which these amendments conflict with the constants of the provisions of Islam and the principles of democracy that concern the obligatory will in the right of the daughters of brothers and sisters from relatives and nephews. The maternal sister, the wife's share of the inheritance between the two laws, and the amendment to the wife's right in the Kurdistan Region after the death of her husband all this is considered a point of differentiation between what I have done in this study and previous studies and what I have done in providing objective solutions following the standards that the law decides are the first to apply. It is closest to the spirit of the constitution, social justice, and the legitimate interest in distributing inheritance. The importance of this paper lies in defining and limiting the controversial issues that revolve between the Iraqi Personal Status Law and the amended law in the Kurdistan Region and simplifying the process of referring to researchers, specialists, and professors regarding the provisions of inheritance that differed, and

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Presenting the subject on foundations based on constitutional and legal principles, and caring for the principles of justice and legitimate interest.

There are many laws in support of the priority application process, especially in the courts of the Kurdistan Region. The problem of the axis of disagreement in inheritance and the point of differentiation between the amended law in the Kurdistan Region and the Iraqi Personal Status Law. This study also responds to the questions raised about the conflict of these amendments with the constants of the provisions of Islam and the principles of democracy. Concerning the obligatory will and inheritance, about the daughters of brothers and sisters from, the relatives, the children of the mother's brother and sister, and the wife's share of the inheritance between the two laws.

It also responds to the questions of judges and researchers regarding the criteria that decide which law is the first to apply and the closest to the spirit of the constitution and social justice in the distribution of inheritance. This research also aims to highlight cases of differentiation between the two laws and choose what is more likely on constitutional and legal grounds in the event of conflict and contradiction between the two laws, in addition to showing the law closest to achieving justice and the legitimate interest.

It also aims to reduce cases of disagreement in the application of laws and motivate the Kurdistan and Iraqi legislators. To enhance the relationship and coordination between legislators during the issuance and amendment of laws to avoid the issuance of disparate rulings to present new trends and provide objective solutions to these issues. It also opens outlets for courts and judges to issue rulings and rely on the findings of this study, regardless of the available legal texts, and to maintain judicial bodies through its findings. It also contributes to expanding legal and legal horizons and providing researchers and specialists with the knowledge of what is most likely in light of the legal and legal foundations and removing the fog and ambiguity surrounding these topics.

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Research Method

This study constitutes the comparative analytical approach,\(^9\) by presenting the evidence and analyzing the legal texts related to this topic, comparing the two laws, highlighting the similarities and differences, identifying the advantages and disadvantages of the two laws, and presenting the alternatives and proposals regarding some Arabic laws, if necessary, which can be referred to as a reference. Author divided the research into two sections, the first topic to the differences contained in the obligatory will between the Iraqi personal status law and the amended law in the region and the criteria governing the priority of application between the two laws, and the first topic is divided into two requirements, the first requirement, in connection with the difference in the obligatory will between the Iraqi personal status law and the amended law in the region, and the second requirement deals with the priority criteria for applying the obligatory will law between the Iraqi Personal Status Law and the amended law in the region.

The second topic is devoted to the priority of application and the differences in it from the obligatory will and inheritance in the right of the children including nieces and nephews and the wife between the Iraqi law and the amended law in the region, and the second topic was divided into two requirements, the first requirement was devoted to the priority of application and the differences in it from the obligatory will in the right of the children including nieces and nephews between the Iraqi law and the amended law in kurdistan, as well as focusing on the priority of application and the differences in it from inheritance in the right The wife between Iraqi law and the amended law in the region the second requirement.

The Difference in the Obligatory Will between the Iraqi Personal Status Law and the Amended Law in Kurdistan and the Criteria Governing the Priority of Application between the Two Laws

In this topic, we explain one of the different issues between the two laws and clarify the most prominent cases of difference between the Iraqi Personal Status

Law and the amended law in the region regarding the issues of the obligatory will, even if it is called a will, but most of its issues are subject to the provisions of inheritance. Therefore it was included among the issues of inheritance in the books of the authors, and an explanation of the amendments made by the Kurdish legislator to Article 74, and the paragraphs he created on this article, which is the point of distinction by which the Kurdistan Personal Status Law is distinguished from the Iraqi Personal Status Law, and to provide evidence to favor one of The two laws over the other in application.

1) The Difference in the Obligatory Will between the Iraqi Personal Status Law and the Amended Law in the Region

First: The obligatory linguistic commandment: taken and the commandment of the thing is the commandment if the commandment is called a commandment because his command recommended the dead.\(^{10}\) The man recommended and advised him: entrusted him; I recommended something to him. And the commandment also: what she recommended. And the guardian: the one who endows and the one who is recomme\(^n\)nded to him, and it is one of the opposites. It is said that a guardian between the guardianship and the will is what I recommended.\(^{11}\)

As for the will in general, legally, it is defined according to Article 64: (The will is to dispose of the estate added to after death, which requires ownership without compensation).\(^{12}\) As for the legally obligatory will, it was defined according to Article 74:

1- (If a child dies, whether male or female, before the death of his father or mother, then he is deemed to be alive upon the death of either of them, and his entitlement is transferred from the inheritance to his children, whether male or female, according to the Sharia rulings, as an obligatory will, provided that it should not exceed one-third of the estate).

2- According to Paragraph (1) of this Article, the obligatory bequest shall be preceded by other wills and in fulfillment of one-third of the estate.\(^{13}\) It is worth noting that the will, in general, differs from the definition of the obligatory will in many aspects, the most important of which are:

1- The will is not executed except after the testator's death, and it is not valid except by offer and acceptance, the son of the testator and the legatee for him. Unlike the

\(^{10}\) Al-Razi, Muhammad bin Abi bin Abdul Qadir Al-Razi, Mukhtar Al-Sahah (Kuwait: House of Culture, 1983) 725.

\(^{11}\) Ibn Manzoor, Muhammad bin Makram bin Ali, Lisan Al Arab (Dar Al Maarif, 2016) 15.

\(^{12}\) “Iraqi Personal Status Law, Law No. (188) of 1959 in force.” (t.t.).

\(^{13}\) Iraqi Personal Status Law, Law No. (188) of 1959 in force.
obligatory will, there is no need for offer and acceptance, and it is executed after the testator's death.
2- The legatee shall reject the will after the testator's death, and the heirs shall not return the obligatory will.
3- The will is distributed to the beneficiaries without distinction between male and female, unless the content of the will indicates otherwise, and the obligatory will is distributed along the lines of inheritance.
4- The will is executed according to what the testator wants, without restriction in some cases that he forbade. As for the obligatory will was confined to the legislator and took it at the will of the testator and the inheritor.
5- The legatee shall be transferred to the legatee or them specifically according to the testator's will. As for the obligatory will, the entitlement of the father and mother from the inheritance shall be transferred to his children, whether male or female. The death of the father or mother is required before their death to implement this.
6- Some bequests are given precedence over others, especially the donations of a terminally ill patient when crowded. As for the obligatory legacy, it has the priority of submission in all cases.
7- The will does not accept representation in its issuance; it must be issued by the testator, unlike the obligatory will that accepts representation by the judge when the testator did not initiate the will before his death. It is implemented by the law, whether the testator wishes or not.

2) Priority Criteria for the Implementation of the Obligatory Will Law between the Iraqi Personal Status Law and the Amended Law in the Region

In this requirement, we will address the priority criteria for applying the obligatory will law between the two laws. As shown, the will and obligatory will in the amended law of the region contradict the obligatory will in the Iraqi Personal Status Law. This requirement includes two branches:

a) The constitutional criterion for the priority of application between the two laws

The first and second paragraphs of Article (121) of the Iraqi constitution states: First: The authorities of the regions have the right to exercise legislative, executive, and judicial powers by the provisions of this constitution, except what is stated in it regarding the exclusive powers of the federal authorities. Second: The authority has the right to amend the application of federal law in Kurdistan in case

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14 Ibrahim Mustafa al-zalmy, the provisions of wills, inheritance, and the right of transmission in comparative Islamic jurisprudence and law (erbil: Yadgar Library, 2016)1 63-181.
of a contradiction or conflict between the law of Kurdistan regarding a matter that does not fall within the exclusive competence of the federal authorities).

The first paragraph, in particular the second paragraph, recognized the right of the regions to amend federal laws unless they fall within the exclusive competence of the federal authorities, and concerning the texts of Articles (110 111) of the Constitution that were allocated exclusively to the federal authorities, which stipulated that the issuance and amendment of legislation and laws do not fall within the exclusive competence For the federal authorities, amending federal laws is guaranteed to the regions according to Article (121) of the constitution (Iraqi Constitution, 2005, F / 1-2 Article 121). In the event of a contradiction or inconsistency between the provisions of the two laws, the amended law by the regions shall have the priority to be submitted unless it contradicts the provisions of the constitution, as long as the constitution acknowledges the right of the region to amend laws.

b) The Standard of Islamic Law

Regardless that the constitution acknowledged the region's right to amend, it is according to Article (2) of the Iraqi constitution, which is considered one of the basic principles of the constitution, which states: (It is not permissible to enact a law that contradicts the constants of the provisions of Islam).

However, although the Constitution acknowledged the right of the region to amend laws according to Article (121) and considered that one of the legal competencies of the regions, the authorization contained in this article is not absolute in all cases, but rather it is restricted by many restrictions, including that it does not conflict with the constants of the provisions of Islam and the principles of democracy As stipulated in the second article of the constitution, and does he consider the amendments made by the Kurdish legislator in the obligatory will to be inconsistent with the constants of the rulings of Islam or not? To know this, it is necessary to refer to the opinions of scholars and specialists to distinguish between the constants of Islam and others, as most scholars and authors agree that the constants are the definitive evidence agreed upon in terms of incidence and significance and the established and total assets that represent the principles and values of Islam, or what is known from the religion by necessity that the jurists
unanimously agreed upon.\textsuperscript{15} Based on the definitions above, the ruling rules apply to all areas of Sharia law, and there are established legal rulings in one area to strive for.

As for the variables, they include legal texts that are decisive or otherwise, but they are presumptive, or what differed in it from the sub-rulings and jurisprudence that are subject to change according to time and place and the nature and scope of diligence.\textsuperscript{16} It is clear from the preceding, from the definition of constants and variables, that the amendments and updates made by the Kurdish legislator regarding The obligatory will, in addition to being one of the prerogatives of the regions under the constitution, is not considered one of the fixed provisions that have no room for ijtihad in it, and it does not contradict the basic principles of Islamic law and moral values of justice and fairness,\textsuperscript{17} and that it is included among the sub-provisions and variables that accept ijtihad as required by the interest and the achievement of justice.\textsuperscript{18} It contradicts the first part of the second article of the constitution.

On the other hand, this topic raises another issue that calls for standing on it. Should the region's laws be subject to the provisions of the federal laws, as they are subject to the constitution?\textsuperscript{19} As long as there is no legal article in the Iraqi constitution stipulating that, and the constitution gave the powers of amendment to the regions, the Kurdish legislator can violate the laws of the federal state, provided that they do not conflict with the constitutional texts, and Islamic established provisions and do not exceed the exclusive powers of the federal authority As stipulated in the Constitution.\textsuperscript{20}

Just as the constitution affirmed that the laws do not contradict the constants of the provisions of Islam, and on the other hand, it affirmed that they do not contradict the principles of democracy according to the second part of the second

\textsuperscript{15} Muhammad Tahir Hakim, “Constants and Variables in Islamic Sharia” (Thirteenth Makkah Al-Mukarramah Conference, Muslim Society, held in the period, Makkah, 2010), 4–74-7.


\textsuperscript{19} Riyad Eid Issa Al-Zuhairi, The contradictions of the Iraqi constitution and the problem of the jurisdiction of regions and governorates (sabah jadid, 2018).

\textsuperscript{20} “Iraq 2005 Constitution - Constitute,” t.t. (2, 121, 110, 111).
paragraph of the second article of the constitution, but this is considered one of the rubber terms that carry many meanings, which results in the occurrence of differences of opinions and sayings, and in light of So, does the amendments made by the Kurdish legislator contradict democratic principles?

To know this, one must refer to the decisions issued by the Federal Court and the Federal Supreme Court. However, it issued many decisions on various issues and did not issue a decision regarding the conflict between the first and second paragraphs of Article Two and how to address them. However, in most of its decisions, it referred to the constants of provisions of Islam and the principles of democracy.\(^\text{21}\)

And we conclude from all of the above from the constitutional standards according to the first and second paragraphs of Article (121) of the Constitution, which stipulates the right of the regions to exercise legislative, executive and judicial powers in accordance with the provisions of the Constitution, except for what is stated therein regarding the exclusive powers of the federal authorities, and according to Articles (111,110) of this constitution that these amendments do not affect the exclusive federal powers, nor do they transgress them, and according to the second paragraph of the same article and the right of the regions to amend the application of federal law, and also based on Sharia standards, the amendments made by the region in this field are not considered a departure from the article The second of the Iraqi constitution, which stipulates the rejection of all enacted laws that conflict with the established Islamic rulings, and that they do not contradict with the Islamic constants, but are included within the variables of legal issues whose ruling changes according to time and place, and that they achieve financial interests for a certain category of relatives that priority The application between the two laws is the law of the region, even if it conflicts with the federal law.\(^\text{22}\)


\(^{22}\) “Iraq 2005 Constitution - Constitute” (111,110).
The Priority of Application Regarding the Difference in the Obligatory Will and Inheritance Regarding the Children of Female Brothers and Sisters and the Wife between the Iraqi Law and the Amended Law in the Region

In this study, we focus on the dividing line between the Iraqi law and the amended law in the region regarding the difference between the two laws and the weighting of one law over the other in application in light of the weightings of the constitution, legal texts, and principles of justice. The priority of application regarding the obligatory bequest regarding the children of female brothers and sisters differed between the Iraqi law and the amended law in the region, and it includes two branches:

1) The Amendments Contained in the Article

The provisions of the obligatory will in the Iraqi personal status law, according to Article 74, are as follows:

1- (If a child dies, whether male or female, before the death of his father or mother, then he is deemed to be alive upon the death of either of them, and his entitlement is transferred from the inheritance to his children, whether male or female, according to the Sharia rulings, as an obligatory will, provided that no exceed one-third of the estate).

2- According to Paragraph (1) of this Article, the obligatory bequest shall be preceded by other wills and in fulfillment of one-third of the estate.\textsuperscript{23} The obligatory will under Article 74 of the Iraqi Personal Status Law contained in the first and second paragraphs is limited to the first class of male and female children of the deceased who died before the death of his mother or father. The first class and the other salient point is to provide the due commandment over the other commandments.\textsuperscript{24}

As for the obligatory will according to the amended law in the region, in addition to the persons mentioned in the previous two paragraphs of male and female children of the deceased, these persons include the following: Article 74 of the law shall be suspended and replaced with the following:

1- If the children's children reunite with the children or the children's children's children, and if they descend, they take the place of their deceased father or their deceased mother, and what they deserve from the inheritance if he was alive is transferred to them, provided that it does not exceed one-third of the estate if they

\textsuperscript{23} Iraqi Personal Status Law, Law No. (188) of 1959 in force.
\textsuperscript{24} Al-Zalami, inheritance, 65, and Judge Muhammad Hassan Kashkul, Explanation of the Personal Status Law No. 188 of 1959, and its amendments (Baghdad: The Legal Library, Chashkul, 2011) 400,401.
do not inherit. The grandfather or grandmother does not give them what is equal to their entitlement. And if he gives them the least, he completes the obligatory commandment.

2- The provisions of the obligatory bequest shall apply to the children of brothers and sisters, whether male or female, regardless of their descent, and to the spouses if the wife is of the People of the Book.25

Discrepancies regarding obligatory wills between the Iraqi personal status law and the amended law in the region. The most prominent features of the two paragraphs of Article 24 amended in the region from the two paragraphs contained in Article 74 of the Iraqi Personal Status Law are as follows:

1- The applicability of the provisions of the obligatory bequest to the successive classes of children, even if it descends when the first class of children does not exist, and the Iraqi legislator did not choose silence as his counterpart of the Iraqi Personal Status Law in limiting the obligatory legacy to the first class or not.

2- The children of the brothers and sisters, male and female, even if they are descended, are subject to the obligatory will rule.

3- Applicability of the provisions of obligatory bequests to spouses of different religions.

2) Priority Criteria in Applying the Obligatory

Priority criteria in applying the obligatory legacy between the two laws about the children of brothers and sisters, whether male or female, no matter how low they are:

The first criterion: The Coverage Criterion

Despite the amendments and additions made by the Kurdish legislator to Article 74, he succeeded in covering all the descendants, including the successive classes of grandchildren, and not confined to the first class only, like the Iraqi legislator, and this is considered a legal shortcoming that must be addressed, so the Kurdish legislator addressed this legislative vacuum and made up for what the Iraqi legislator missed, and he covered all those who are entitled to the obligatory will and the amended article dealt with all classes.

This reinforces the position of the Kurdish legislator in amending it. The motives of legislation apply to successive classes as they apply to the first class of descendants. Because the reason and cause are shared along the lines of the ruling

25 “Amending the Implementation of the Personal Status Law No in the Kurdistan Region – Iraq”, Law No. 15 of 2008 188 of (1959).” (t.t).
rules in inheritance laws, and the same wisdom of legislation is achieved in all other classes when there is no first class of grandchildren.\textsuperscript{26}

The second Criterion: The Kinship Criterion of Justice

The Kurdish legislator added another paragraph to Article 74 as follows: (The provisions of the obligatory will apply to the children of brothers and sisters, whether male or female and if they are descended.........).\textsuperscript{27}

In the Iraqi Personal Status Law, the children of the male brothers are considered as clans deserving of their uncle’s legacy when there is no closer heir to withhold them in Islamic law, and he excludes his sister from her uncle’s inheritance despite the unification of their kinship ratio to the deceased; However, the girl is deprived of inheritance because of her femininity and is considered one of the wombs, and this law is considered valid in the Iraqi Personal Status Law, and so far there is nothing that contradicts what has been established by Islamic law in this division and according to the second paragraph of the first article of the Iraqi Civil Code, which states: (If there is no legislative text that can be applied, the court will rule according to custom, and if there is no, then according to the principles of Islamic law that are most appropriate to the texts of this law without being restricted to a specific doctrine, and if there is no then according to the rules of justice).\textsuperscript{28} As it is known through the text, when there is no legislative text for the application of the incident, the principle of justice is considered a legislative principle. The principle of justice is one of the basic principles of Islamic law. It is considered a legal reference for applying the incident after customs under the Iraqi Civil Law in force.

Al-Mustafa Al-Zalami says in this regard: "We call on the legislator in the Islamic world to treat the obligatory bequest fairly............ It includes the children of brothers and sisters who are related by blood, such as the daughters of the brother, the children of the sister, and the children of the brother from the mother. It is not fair that he inherits The sons of the full or paternal brother and their sisters are forbidden with them just because they are males and females with the unity of

\textsuperscript{26} Abdullah, Obligatory Will in Iraqi Law, 89.
\textsuperscript{27} "Amending the Implementation of the Personal Status Law No in the Kurdistan Region, (15), 2008" (t.t.).
\textsuperscript{28} "(Iraqi Civil Code, and its amendments, Law No. 40 of (1951).”) (t.t.).
kinship and its degree to the deceased...... Therefore, we suggest that the estate, in this case, be distributed to the nephew and the niece based on the obligatory will, and this is a concern for justice and a combination of the two jurisprudence, Sunni and Shiite.29

From the preceding, it became clear to us that the amended law in the region enjoys the priority of application by implementing due guardianship for the children of brothers and sisters who are related by blood, such as nieces, nephews, and nephews from the mother; Given what he enjoys in exercising his legislative, executive and judicial powers, and his right to amend the application of federal law by the provisions of the constitution, in addition to that it is supported by logical evidence, and by the principle of justice, which is considered one of the basic principles agreed upon by the divine laws and positive laws, and enjoys the approval of all agreements and declarations Universal human rights30 that emphasize the achievement of the principles of justice and equality.

The Priority of Application Regarding the Inheritance in the Right of the Wife Differed between the Iraqi Law and the Amended Law in the Region

1) The Share of the Wife in the Iraqi Personal Status Law and the Amended Law in the Region

Article 91 of the Iraqi Personal Status Law states: (The husband and the inheriting descendant of his wife are entitled to a fourth and half if there is no such thing. As for the wife, she is entitled to one-eighth when there is an inheriting descendant and a quarter if there is no such thing).31 According to the first paragraph of Article 91, the wife has two cases of inheritance from her husband’s inheritance:

1- The price when there is an inheriting descendant, whether from her or another.
2- A fourth in the absence of an inheriting descendant, whether from her or another.

The provisions of Paragraph (1) of Article 91 of the Law shall be suspended and replaced with the following: The husband and the inheriting descendant of his

29 Al-Zalami, inheritance, 67.
31 “The Iraqi Personal Status Law, Law No. (188) of (1959), in force.” (t.t.).
wife shall be entitled to the rent and half if there is none. As for the wife shall be entitled to the price if there is an inheriting descendant and the proceeds if there is none after extracting her share of what she contributed to in its formation from the estate.

It also appears from the text of Article 91 that the Iraqi Personal Status Law applies to the Sharia rules in the Sharia as approved by verse (12) of Surat Al-Nisa, without addition or subtraction, which is related to the wife's right to inheritance. However, the Kurdish legislator amended the first paragraph of the article and stipulated that During the first paragraph, she must return her money, which she contributed to her formation with her husband, before distributing the estate, after which he pays her share of the quarter or the price.32

2) Priority in Applying the Two Laws

Before entering into the preliminary details of any of the two laws in the application, we must answer two suspicions that raise controversy and help the answer process, which is represented in the following:

First, This amendment conflicts with the first paragraph of Article 1 of the Iraqi Constitution of 2005, which states that it is not permissible to enact a law that contradicts the provisions of the constants of Islam.

Since the wife's quorum is specific and fixed by definitive evidence from the Qur'an, regardless that all the verses of the Qur'an are definitive roses, and are considered among the verses definitive indicative Because the verse that mentioned the wives share in a certain percentage of the money, such as a quarter and an eighth, does not bear interpretation and different interpretations, and as passed in the definition of the constants in the second branch of the first requirement of the first topic. Its texts were definitive, rose, and indicative.

Second, It contradicts an explicit text from the verse (12) of Surat Al-Nisa and is considered one of the definitive texts, roses, and indications.

The contradiction is that the verse gives the wife a quarter and an eighth in one letter, a quarter when there is a descendant of the inheritor, whether she is from her or other women, and an eighth when there is a descendant of the heir from her

or other women, but the Kurdish legislator according to Law No. (15) of the first paragraph of Article (25), It decided to recover all that the wife contributed to building her husband's wealth by forming a committee of people of expertise in addition to her legitimate and specific inheritance rights

The priority of application between the Iraqi and the amended laws in the region regarding the right of the wife is evident from the following aspects:

The first side, The Iraqi legislator, in the first paragraph of Article 91, contented itself with determining the share of the wife's inheritance from her husband's estate from his own money and did not go into the details of applying the article to the incident, while what the Kurdish legislator did in Law No. (15) of the first paragraph of Article (25) stipulated the recovery of her financial rights that contributed material and moral support to the investment of her husband's capital or contributed financial support with a certain percentage of her money with her husband and this is not considered contrary to the rules of inheritance in Islamic law and does not fall within the increase in the share of the wife's inheritance.

The second side is not contrary to the constants of the rulings of Islam but rather is in agreement with the justice and fairness of Islam, and that what he did of amending the wife's right is correct, As he rectified what was violated before the modification. However, it was inconsistent with the constants of the provisions of Islam, which are compatible with the basic principles of Islamic law and human and moral values. Thus, we can reconcile the two rules, which preserve the rules of inheritance established by peremptory evidence that is not permissible. Overcoming it, the wife's right to inheritance remains established by conclusive evidence, justice is achieved, the wife's injustice is lifted, and her violated financial rights are protected through this amendment.

The third aspect is that one of the conditions of inheritance is the death of the inheritor, but the wife is still alive. It is illogical for her to be the heir of the money that she contributed to her husband. On the other hand, the distribution of her money to the heirs before her death, in addition to its invalidity, is considered a violation of one of the conditions of inheritance, given that the estate is A joint outcome of their financial and moral efforts, and their shares are not included in the
estate and are not counted against it; Because the inheritance is what the deceased leaves from his own money, not from what was shared between her and her wife.

3) The Position of Arab Laws on Joint Funds

Except for the Tunisian legislation that issued Law No. 91 of 1998, Chapter (6), which is related to the system of sharing property between spouses, while other Arab laws are devoid of the division of joint funds between spouses, and the legislation of a law that regulates how to distribute acquired funds that were built with material and moral efforts For the spouses after the marriage contract, except for the financial liability that was approved by some Arab countries. What is meant by the financial estate: It is the sum of a person's rights and debts estimated in money, viewed as a legal group.33

a) The wife's Financial disclosure in Moroccan legislation

Morocco is considered one of the first countries to shed light on the management of joint funds between spouses, or what is known as "toil and endeavor," as the Moroccan Code - Family Code - No. (70) for the year 2021, included what Article 49 stipulated: The spouses have a financial liability that is separate from his other half, but it is permissible for them, within the framework of managing the funds that will be earned during the marriage, to agree on investing and distributing them, and this agreement is included in a document independent of the marriage contract, which states clearly and explicitly that.34 This indicates that the Code recognized the right of the spouses' financial independence, provided that it was issued in a separate document upon the marriage contract.

b) The Wife's Financial Disclosure in Algerian Legislation

Article (37) No. (205) of February 2005 states: "Each of the spouses has a financial liability independent of the other's liability, except that the spouses may agree in the marriage contract or a subsequent official contract about the common matters between them that they acquire during married life and determine the proportions that they acquire." devolve to each of them." The matter became up to the judge according to these ratios that are determined, and this matter differs from

Morocco in terms of the possibility of including this right in the marriage document or a subsequent marriage contract, provided that this contract is formal. As for Western legislation in its entirety, it is based on the union of the financial inheritance of the spouses and the sharing of wealth, as French legislation is distinguished by the establishment and regulation of marital relations and their effects, given that each of the spouses is required to bear the household burdens and obtain financial gains.35

c) Sharia Fatwas Regarding Financial Disclosure

The Fatwa Committee of the House said: "It is established by Sharia that the husband has a financial responsibility independent of his wife and that the wife also has a financial responsibility independent of her husband because the Prophet, may God's prayers and peace be upon him, said: (Everyone has more right to his money than his father, his son, and all people), and that the marriage contract has no effect on The financial liabilities of the spouses by full or partial merger.

Ali Gomaa, the former Mufti of the Republic and a member of the Council of Senior Scholars, said: “Marriage in Islam differs from it in most Western nations, stressing that the Muslim woman has an independent financial responsibility and she has the freedom to dispose of her own wealth, as each of them has an independent financial responsibility, so the wife has nothing to do with what he earns.” The husband, his income, or his wealth; likewise, the husband has nothing to do with what the wife earns or her income. They are completely separate in matters of income and wealth, and the marriage contract does not entail a right over the other in property, wealth, and income for either of them.36

Ahmed Al-Tayeb, Sheikh of Al-Azhar Al-Sharif, considered the woman's contribution to the development of her husband's wealth as part of the Islamic heritage and called for the necessity of reviving the fatwa "the right to hard work and endeavor" to preserve the rights of working women. Given the confusion caused by the term "the right to hard work and endeavor" in a wide sector, Osama Al-Hadidi, Executive Director of the Al-Azhar International Center for Electronic

35 "UK Parliament."
Fatwa, clarified this, saying It was with her work salary, or by building a house for her family, or by owning her own company or shops)\textsuperscript{37}.

Al-Radwan explained more than that and went into details and explained the term toil and endeavor, saying: (According to Al-Hudaydi in press statements, that the toil and endeavor of a woman, whether it was from her work or her inheritance, or an old financial liability before her marriage, she gave to her husband or opened an account for him In the bank, this money is estimated as an independent financial asset for the wife, apart from the inheritance, meaning that the heirs do not have the right to share with the wife in this money, but if the husband leaves and there is no evidence of the woman's right to hard work, it is estimated by the wife." \textsuperscript{38}

Similar facts from the history of the predecessors: Luqman Barakat said in an article under the title: (One of the masterpieces of civilizational jurisprudence: The wife has half of the estate in the Malikiyah: 1) During the era of my caliphate Umar bin Al-Khattab - may God be pleased with him - Umar bin Al-Harith, who was the husband of a woman, Habiba bint Zureik, passed away. Habiba was a fashion weaver, and her husband used to trade in what she produced and repaired until they gained abundant money. When the husband died and left money and real estate, his guardians received the keys to the treasuries, except that the wife disputed with them. When they disputed with Omar Ibn Al-Khattab, he decided to pay half the money and inheritance the rest. 2) Some Malikite jurists, such as Ibn Ardun and Al-Qadi Al-Qarawi, issued fatwas that the wife is a partner with the value of work and service and the husband with his value in work. Because the wife, except for the burdens of the house, goes out with her husband to work in the fields and farms\textsuperscript{39}

Although some Malikite jurists such as (Ahmed Al-Baal, Abd Al-Wahhab, and Al-Alami) do not agree with Ibn Ardun and Al-Qarawi in some fatwas related to financial affairs between spouses, everyone agrees that the wife takes her right according to her service and her contribution to the capital.\textsuperscript{40}

It is clear from what was reported by the caliph Umar ibn al-Khattab decreed that half of the money be given to the wife of Umar ibn al-Harith, and the rest

\textsuperscript{37} “What does the fatwa 'the right to toil and strive' mean?”, t.t., https://www.parlmany.com/News/2/474352.

\textsuperscript{38} “What does the fatwa 'the right to toil and strive' mean?”

\textsuperscript{39} Al-Taweel, The Problem of Money with Marital Duration, 85.

\textsuperscript{40} Ibid, 63, 64.
bequeathed to her wife that her wife was an actual contribution to building her husband's wealth, but rather she was the effective element in creating wealth. She had the right to claim her financial rights for the same reason. In issuing the fatwa to Ibn Ardun when he said: They have the division according to the service, so this issue leads us to the fact that the most correct and closest opinion is to give the wife's share in what she contributed with her material and moral efforts, and not, as some researchers claim, the division of money acquired after marriage between the man and the woman; Because without the work of the woman and her support in carrying out the household burdens, the man is not able to develop the family's money. This opinion is valid for all family members, and it is not limited to the wife only Because all family members bear part of the household burdens and obligations and provide physical and moral support to the family official.

It is clear from the preceding that what the Kurdish legislator has done is the most correct. He mediates between those who called for dividing the money earned after marriage between the spouses, regardless of the wife's contribution to the creation of the family's wealth or not, in loyalty to the woman and in appreciation of her efforts in the way of developing money, and between those who said that the spouses have an independent financial responsibility. The deprivation of one of the spouses when there is no head, money in its exploitation, and investment shows the preponderance of what the Kurdish legislator made of the amendment.

Mustafa Al-Zalmi says in this regard: “The capital of the financial company is considered from their intellectual and material efforts, and it is called in the legal term the company of bodies, and the financial wealth built as a result of their efforts, and in most cases the wife contributes materially to the financial gains, and based on these facts the estate is not considered a net property of the husband, so it must Taking out the wife’s share of what she contributed through her financial efforts before taking out her share of what she is entitled to from her pure husband’s estate by a quarter or an eighth”\textsuperscript{41}, based on the proposals of Mustafa Al Zalmi.

\textsuperscript{41} Ibrahim Mustafa AL-Zalmi, \textit{The Provisions of Wills, Inheritance, and The Right of Transmission In Comparative Islamic Jurisprudence and Law} (Erbil: Yadgar Library, 2016), 50.
Conclusion

The fundamental difference between the Iraqi Personal Status Law and the amended law in the Kurdistan Region is in matters of inheritance, specifically centered on the obligatory will and the wife's inheritance. The Kurdish legislator made amendments in both matters, considering that amending federal laws is guaranteed to the regions by constitutional texts as long as they do not conflict with the constant provisions of Islam and the principles of Democracy. Accordingly, the Kurdish legislator in the Kurdistan Region amended the obligatory will and the wife's share in the estate. This is not considered a departure from the 2005 Iraqi constitutional framework because the Federal Supreme Court, in its capacity as supervisor of the constitutionality of laws, did not issue a decision stating that what the region did was Amendments regarding the obligatory will and inheritance of the wife conflict with the constants of the provisions of Islam and the principles of democracy. Given the existence of the two laws in this regard, questions have been raised about which law is the first to be applied following a dispute due to the amendments made by the Kurdish legislator.

We have proven that the amended law in the region is the first to be applied according to the constitution. Standard, legitimacy, and the requirements of justice because the Kurdish legislator, about the obligatory will according to the amended law, is more successful in covering all beneficiaries, including grandchildren except the first class, brothers and sisters, and spouses who differ in religion compared to the Iraqi Personal Status Law, and that the existing amendments regarding the wife do not. It is considered a change to her share in the inheritance. Rather, it is a recovery of what she contributed to investing the financial wealth through her material and moral participation, and what the region did against the wife's right to the estate is supported by the sayings and opinions of jurists in Islamic jurisprudence and its heritage.

We call on the relevant authorities in the Federal Supreme Court to remove ambiguity from some expressions that carry many meanings, such as the

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constants of the provisions of Islam and the principles of democracy, and to issue a decision regarding the priority of application when there is a conflict between the law of the federal state and the amended law in the region, in light of considered standards. We also call on the Iraqi legislator and the Kurdish legislator to strengthen the relationship and coordination during the issuance of laws through specialized committees to avoid the issuance of disparate rulings. We call on the Iraqi legislator to issue a legislative text regarding the wife's right to inheritance, return her money that contributed to her development with her husband, and then pay her her share according to the legal division, similar to the Kurdish legislator.

Authors’ Contributions

S.H.B., as the main author of this article, was responsible for the research activities, such as the data collection, presentation, and writing of the report and manuscript.

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