

# The Family Law In Mesopotamia “Hammurabi Law As A Model”

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## Abstract:

This paper sheds light on the law of family and familial issues in Mesopotamia according to Hammurabi Law. In this line, the family was the basis in Mesopotamia and the Law of Hammurabi focused on all its related issues starting from engagement until marriage, children, adoption, betrayal, heritage, divorce, etc. Thus, we conclude that the family law in Mesopotamia was developed and focused on the issues of the family since it is the core of the society, which succeeds with its success and fails with its failure.

Based on what has been said, this paper aims at showing the importance attributed by Hammurabi Law to the family in Mesopotamia, as it is the pillar of the society. In so doing, we used the historical descriptive method as it suits the nature of the study.

Keywords: family; Hammurabi; law; legislation; familial relations.

## Introduction:

The family is the basis of the society, which succeeds with its success and gets distracted with its failure. Therefore, the legislators of the ancient civilizations worked, since an early age, on organizing the whole society, setting regulations for the relations between its individuals, and enacting laws. In this line, Mesopotamia was one of the societies that gave big importance to the legislations. After the 04<sup>th</sup> millennium B.C, the first agricultural villages of Mesopotamia emerged and witnessed aspects of life and correlated interests of the people, temple, and bishops. Therefore, it was necessary to set legislations to protect the individuals and organize the daily life. These legislations included

articles that organized the society, which is made up of many families. The best example was Hammurabi's that is the most comprehensive series of ancient Iraqi reforms and legislations. Based on what was said, we raise the following problematic: "how was the family in Mesopotamia regarding the legal aspect in Hammurabi Law?" From this question, sub-questions arise as follows:

- What is the importance of family in Mesopotamia?
- Why did the family get a wide interest in the ancient social reforms and legislations in general, and in Hammurabi's in particular?
- Did Hammurabi Law guarantee all the family rights?
- What are the familial aspects covered by this Law?

This study aims at showing the importance given by Hammurabi Law to the family, as it is the core of the society. As for the method used, we relied on the descriptive and historical methods as they suit the nature of the study. In this regard, the historical method enables us to extract information from various sources that speak about Hammurabi Law and the articles related to the family. On the other hand, the descriptive method helps talking about the family in Hammurabi Law.

### **1. Importance of the family in the legislations of Mesopotamia:**

The ancient Iraqi legislations included solutions to the various social and economic aspects of the ancient life. Besides, they set legal provisions for each issue regardless its simplicity. The issues related to family life are one of the main issues covered by these legislations (Rodaina, 2011, pp. 245-246). In this context, Hammurabi Law (Miles, 1952, p. 41) devoted a special section for the provisions of marriage and the issues of the wife, heritage, children, adoption, and divorce (Bahnam, 2009, p. 38).

This interest results from the importance of the family. The social reforms, legislations, and the religious thought in Mesopotamia set regulations and rules for the individuals. In addition, most of the articles of the ancient Iraqi legislations handled the family relations (Salim, 2012, p. 53). The diversity of the types of the familial relations is one of the causes that pushed the ancient Iraqi laws and legislations to focus on family. These relations are social and economic bonds that start and continue with marriage until the death of one of the partners or divorce (Ibid). Undoubtedly, the Law of Hammurabi<sup>1</sup> aimed at protecting

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<sup>1</sup> Hammurabi was the most famous Babylonian king. He is the real founder of the Babylonian Empire and the son of King San Moblit (1748-1729

the family relations and the rights of each individual including the husband, the wife, the children, and the whole familial system.

## **2. The family issues in Hammurabi Law:**

This law focused on the 1<sup>st</sup> steps of the family emergence, i.e., the engagement, and the issues related to the woman and her relation with the man. Then, the law talked about marriage, birth giving, heritage, and divorce (Toufik, 2017, p. 282). Nevertheless, before speaking about these steps, we have to define Hammurabi Law, as it is our focal topic.

### **2.1 Definition of Hammurabi Law:**

The statue on which the law had been engraved was found in December 1901 and January 1902 in Acropolis, Sousse, that had been the capital of the Elamite State. This was thanks to a discovery delegation sent by the French government under the supervision of the general director, De Morgane (Harper, 1904, p. 15). The statute was divided into three big parts. After attaching them, discoverers found out that they include Hammurabi Law in the Babylonian language written in cuneiform. The parts together were cone-shaped with a length of 2.25 of Black Diorite stone (Klinkel, 1990, p. 182). The Law included 282 articles that represent the 1<sup>st</sup> source for many old statutory laws. It tackled diverse life aspects in details, mainly the familial issues (Miles, 1952, p. 41).

### **2.2 The law family in Hammurabi Law:**

The following lines show the laws that regulate each phase of family building, the method of its end, and the consequences on the couple:

#### **2.2.1 Engagement:**

It is a preliminary phase according to Mesopotamian conditions (Delaporte, n.d., p. 289). The father had to choose a wife for his son. Then, when the two families agree, they start preparing for engagement. In this line, the son used to send some gifts and money, known as Tirhatou, to the house of the bride (Ibid, p. 290). However, this was not obligatory as the engagement could happen without Tirhatou. Besides, the engagement did not mean an ultimate step; therefore, Hammurabi law discussed the case of disengagement. In this line, article 159 provided that if the man decides not to marry the girl, her father keeps the Tirhatou (Al Amine, 2007, p. 47; Jones, 2003, p. 117). Moreover, Article 160 provided that if the father of the girl breaks his pledge of marrying

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B.C). He is the writer of the most famous law in the ancient world. For further, see: Ahmed Amine Salim, 2007, p. 47.

off the girl to the man, he gives back the Tirhatou to the man, except food (Salim, 1985, pp. 29-30). Furthermore, article 161 states that if the father of the girl marries her off to another man after receiving the Tirhatou from the first man, he must pay the double Tirhatou and gifts (Ibid, p. 64; Cruveilhier, 1938, p. 161).

We must point that the start of the negotiations, engagement, and gifts giving were a form of marriage declaration as they preceded the process of tying the knot. In case of the death of the boy during the engagement period, one of his relatives had the right to carry on the other ceremonies and marry the girl. However, if the father of the girl refused, he had to pay back the gifts to the family of the man. On the other hand, if the girl died, the boy could marry one of her sisters or get back his gifts if they refuse, except food (Baqir, 2011, p. 408). In this regard, we notice that Hammurabi Law tackled most of the separation potentials, even death.

## **2.2 Marriage:**

Marriage between a man and a woman is reinforced with a legal contract that gives them the nature of a family and guarantees the legal right of the woman as a mother and important member in the society. Hammurabi Law did not neglect the consequences of marriage including the children and the heritage. The humanist orientations prevailed in the articles of the law. Despite that man had distinct rights, he did not have the right to enslave the woman, as her rights were guaranteed before and after marriage (Houcine, 2015, p. 198).

Marriage is based on a contract that is a written document that represents a proof that binds the husband, in front of witnesses, to rights and duties of the wife and shows the amount paid in case of divorce and the sanction of the betraying woman. In general, it showed all the conditions of marriage (Delaporte, n.d., p. 88). Issuing the marriage contract is necessary for the marriage validity, not just to prove the marriage (Cuq, 1905, pp. 6-7). In addition, the marriage contract was issued between the groom and the bride's father, brother, or mentor. Therefore, some researchers see that the ancient Iraqi family was patriarchic (Salim, 2012, p. 31).

The Mesopotamian family in general, and the Babylonian in particular, was based on a marriage system with complex laws. In this regard, the man was the house chief with the domination over the family members. He had the right to sell his wife to pay his debts and divorce her if she was barren. In this context, she would be hanged if she committed adultery and would be drowned in water if she was a mother who refused to perform her duties

(Mahrous, 1997, p. 106). Marriage between the free people was limited to one wife as the basic rule was that man gets one wife; nevertheless, the law and traditions allowed having more than one in specific cases (Delaporte, n.d., p. 88).

Hammurabi allowed marriage between the free people and slaves (Jones, 2003, p. 119). According to (Crueveilehr, 138, 175), article 175 provided that man has the right to take more than one maid, who can be later a legal wife if the man issues and declares a legal marriage contract. The Mesopotamian legislations, mainly that of Hammurabi, allowed polygamy in some cases such as the severe illness of the woman or her inability to give birth. In this line, we must point that the law made the secondary wives inferior to the first. Thus, the second wife had to respect the first and kiss her feet according to article 145 (Al Amine, 2007, p. 43-44). Besides, the Babylonian legislator made sure not to incite for marriage to a second wife, as it is difficult to establish justice between them; therefore, monogamy was the most common while polygamy was exceptional (Houcine, 2015, p. 200).

In addition to the contract, marriage required 03 types of monetary amounts as follows:

- Tirhatou: it is the money paid by the groom to the family of the bride. It is like the dowry and is possessed by the wife and inherited by her children.
- Shirkatou: it is a monetary gift by the family of the groom according to articles 178-182 (Jones, 2003, p.p. 121-123). It is like a deposit by the groom to the bride. He had the right to manage the money. However, it would be inherited by the wife and her children. In case the wife dies, the money is taken by her family.
- Nodono: it is like a gift or donation by the man to the woman to live with in case her husband died because she did not have the right to inherit her father (Baqir, 2011, p. 408).

### **2.2.3 Betrayal:**

The woman had to be shy and keep her chastity. Besides, she had to show good behaviors, avoid illegal relations with man, and fully obey her man. In this line, she would be hanged in case she was caught between the arms of another man (Bader al Dine, 1979, p. 57. According to article 129, if the woman was caught sleeping with another man, both should be tied and thrown in the river because she violated one of the most important social duties (Harpeer, 1904, p. 2; Al Amine, 2007, p. 40). In this line, article 131 handled the issue of the husband's accusation of adultery against the wife without evidences. In this case, she had to swear to God

and go back to her house; she would be innocent if no divine abomination affected her later (Cruveilhier, 1938, p. 129).

Furthermore, article 132 pointed out that if a married woman were indicted by a third part of being in a relation with another man without evidences, she should acquit herself through the river test (Salim, 1985, p. 83). The article states that if the wife were indicted without being caught in bed with a man, she would jump in the sacred river so that it shows her sin or innocence (Cruveilhier, 1983, p. 129). Sometimes, betrayal does not refer to sleeping with another man; it also means causing the death of the husband for another man. In this case, article 195 provided for sentencing the wife to death (Rachid, 1973, p. 145).

Besides, the law stated that the female slave married to a master gets her freedom with her children after the death of her husband, without having shares from the heritage of the father who did not emancipate them (Rachid, 1973, p. 149). The woman had to take care of her house and children. Besides, she was obliged to stay home unless her husband allows her to go out. If the woman does not abide by these rules, she is punished because going out without the husband's permission tarnished his reputation. In addition, her aggression towards any one brings problems for her husband. In this regard, the legislator put the women between the hammer of getting divorced without compensation and the anvil of staying home as a slave, as provided for in article 141 (Bader al-Dine, 1979, p. 57).

Article 133 provides that if the husband was a prisoner, the wife should not leave her house or enter the house of another man (Cruveilhier). On the other hand, if he leaves her without food, she has the right to leave him and marry another man, as provided by article 134 (Al Ahmed, 1985, p. 94). In addition, the ancient Iraqi laws intervened when women are attacked; the laws were on behalf of the victims according to each case. In this line, beating was among the cases that caused harm to the wife. In this context, he who causes the abortion of a woman from Oulim<sup>2</sup>, must compensate her. However, if he causes her death, his punishment shall be very strict as killing his own daughter. On the other hand, if the victim is from Mochkino<sup>3</sup> stratum, the criminal must give

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<sup>2</sup> Oulim is the stratum of the nobles who enjoyed full freedom and the pastoral rights and privileges. For further, see: Sitino Moskatti, the ancient Semitic civilizations, translated by Yaakoub Bakr, Al-Roqi house, Beirut, p. 96.

<sup>3</sup> Mochkino is the 02<sup>nd</sup> stratum of the society, we can call them the commons. They were free people. For further, see: Ibid, p. 96.

compensation regardless abortion or death, as provided by articles 211 and 212 (Sliman, 1987, p. 196).

The speech about marriage leads to speaking about illicit relations that refer to the social and legal limits between the ethical and unethical, or the allowed and prohibited. The Iraqi laws identified a set of banned relations and enacted stringent punishments against their commission. For instance, the man can ask the hand of a woman and marry her without contacting her before marriage. In addition, the married woman is not allowed for any other man. Articles 154 and 155 provided for the death sentence to anyone who rapes a woman, and banned contact between the father and the son's wife who is taken as one of his daughters (Al Dhanoun, 1992, p. 62).

Other banned relations in the ancient Babylonian society were the relation between the son and his mother after the death of the father. In this line, article 157 provided for burning them both because the act goes against nature and ethics (Cruveilhier, 1938, p. 129). The list of the banned relations end with the daughter. Thus, there are no other details about the banned relations regarding the relatives such as the cousins (Al Hachemi, 1985, p. 96). We must point out that the punishments provided for against the married women go until death. This shows the high social position the woman took in the public life (Ibid).

Due to the importance of family in Mesopotamia, the legislator gave big importance to the marital relations and more privileges to the husband. This manifests in the unequal rights and obligations. In this context, most of the laws provided for the death of the wife if she rejected the marital bond. Therefore, she had to keep chastity and avoid relations with other men.

#### **2.2.4 Children and adoption:**

Children are the fruit of marriage. Since the early ages, the Mesopotamian family aimed at giving birth to many children because of the belief that well-being lies within the big number of children. This manifests in cuneiform texts related to this topic (Al Jabouri, 1985, p. 143). The ancient laws handled the issue of children and gave it priority in the family law. Besides, the laws enacted sanctions against anyone who, voluntarily or involuntarily, causes a woman's abortion, as provided for in articles 211-212 (Sliman, 1987, p. 196).

We pointed previously that man could marry a second wife if the first were barren. Therefore, the barren woman used to give one of her maids to her husband to make up for the inability to get

children. Besides, in case of marriage with nuns (who were not allowed to give birth to children), they had to give a maid to the husband to get children (Salim, 2012, pp. 92-93). Moreover, adoption was common in Mesopotamia in order to keep the social entity of the family through giving a child to the family that does not have children. This process was subject to many duties and rights (Salim, 2012, p. 109).

Adoption is a relation by which an individual becomes the son of another man, rather than his real father. This relation was managed by provisions in Mesopotamian legislations, mainly that of Hammurabi. Besides, this relation identifies the ethical obligations and the common interest of both parts (Miles, 1952, p. 388). Man had the right to adopt an infinite number of children, even old people (Baqir, 2011, p. 82). This takes place through a written contract between the adopter and the family that raised the adopted. The contract provided that the adopter abides by his duties towards the adopted and considers him one of his natural children; this includes good treatment, education, and heritage. In addition, the adopted had to obey the adopting couple and to consider them as his real parents (Delaporte, 1970, p. 80).

It is noteworthy mentioning that in case the adopted rejected his parents, saying "you are not my father and you are not my mother", his tongue should be cut as provided for by article 192 (Sliman, 1987, p. 260). In addition, article 193 provides that if he increased his rejection through looking for his real parents, his eyes should be blown, or he should be sold as a slave (Delaporte, 1970, p. 80). Furthermore, Hammurabi Law prohibited claiming to get back the child by the first raising family, as provided for by article 185 (Finkelstein, 1969, p. 545). As for article 186, it shows some humanistic aspects in case of adoption. Hence, in case of adopting a baby, he remains under test. In this regard, if he adapts with the new environment, he stays there, while if he keeps asking for his mom, he goes back to his parents without any legal consequences (Salim, 2012, p. 110).

Articles 188-189 identified the cases of adoption and the duties and rights of every part. Hence, in case the adopter teaches the adopted a craft, nobody has the right to take the adopted back. On the other hand, if he teaches him nothing, the adopted has the right to go to the house of his father (Salim, 2012, p. 111). Furthermore, in case the adopter does not recognize the adopted, the latter is taken back to his parents, as provided for by article 190 (Crunveilhier, 1938, p. 188). On the other hand, article 191 covered the case when parents adopt a baby and then the wife gives birth to a baby. In this regard, the adopted may be asked to



leave in return for 1/3 of the funds, crops, and house of the adopter (Salim, 2012, p. 112).

### **2.2.5 Heritage:**

Hammurabi Law identified the cases of heritage and its big problems related to the division of the heritage, the shares, and the legal inheritors; which are the core points in heritage. The judge used to rule that the money go to the males while the right of the wife and the females was not clear (Rodaina, 2011, p. 254).

#### **2.5.5.1 Males:**

The general rule provided that all the males (sons, grandsons, and brothers) get the money to keep it within the family. Besides, the right of the sons was compulsory as long as they were legitimate sons unlike the sons of the maid. The sons divide the heritage equally if there is no testament that provides for a specific share for a specific son. In this line, a sum of money, called “the marriage gift”, was cut on behalf of the little children, as provided for by article 160 (Cruveilhier, 1938, p. 161). If the father died and left little children, the mother should take care of them. In case she got married, they would move with their mother to the house of the new husband (Salim, 2012, p. 113). The law obliged the new husband to preserve the money of the minor children (Saleh, 2012, p. 801).

In addition, article 168 provided that the father cannot deprive his son of the heritage as a punishment for a big sin. In case he did this, the judges would investigate the past of the son and decide whether the son committed a sign that allowed depriving him of the heritage (Jones, 2003, p. 118). Besides, article 169 mentioned that the father had to forgive the son who committed a big sin for the first time. However, in case he repeated it, the father had the right to deprive him of heritage. Furthermore, article 158 pointed that the father had the right to deprive the son of heritage in case he committed adultery with his father’s wife. The article states that he who was caught between the arms of the wife of his father who has given birth to children, shall be expelled from the house and deprived from the heritage (Salim, 2012, p. 124).

#### **2.5.5.2 The females:**

Their right is not clear in the Law of Hammurabi. It seems that the females were deprived of heritage and substituted for this by Shirkatou. Moreover, some say that the female used to get 1/3 of the heritage of her father if she was not married. In this regard, we do not know whether she used to get 1/3 of the money only, or even of the land which was very important for the agricultural

societies in general (Delaporte, 1970, p. 98). Nevertheless, the girl had the right for heritage in some cases such as not having brothers. Moreover, the nun used to inherit her father without taking advantage of the money that shall go to her family after she would die (Hadid, n.d., p. 51).

### **2.5.5.3: The widow:**

The widow used to take an amount, which equals the gift of her marriage, from the heritage (Ibdi) because the sons had the right to share heritage without the father's wife. If the man dies without no children, the wife gets the full heritage and the gift of her marriage (Nodono) and remains the housewife (Rezkana, n.d., p. 30). On the other hand, the dead barren wife is inherited by her father after the husband gets an amount that equals the gifts before marriage. In addition, the legislations provided for the right of the husband to leave a testament and donation for the wife without any objection by the sons (Saleh, 2012, p. 801). In this context, article 150 stated that she could waive part of the donation to her real children (Cruveilhier, 1938, p. 15).

### **2.2.6 Divorce:**

According to the ancient legislations, mainly Hammurabi's, the marital bond ends with involuntary methods such as the death of the partners, or with voluntary methods as divorce or the absence of the husband. In any of these cases, specific outcomes emerge. In this regard, Hammurabi Law discussed the provisions of the full end of marriage (Rodaina, 2011, p. 250). Despite that Hammurabi Law allowed marriage for the man as a general rule, it limited this freedom with financial and personal liabilities. For instance, it made the delayed dowry equal the advanced one when marriage (Telmestian, 1978, p. 113).

The causes for which the Babylonian law allowed the husband to divorce his wife are:

- When the wife does not take care of her house and children, the husband has the right to divorce her without compensation or to keep her as a slave (Fadel & Amer, 1979, p. 72).
- If the wife is barren, the husband has the right to divorce her in return for money to start her new life.
- When the wife has a severe disease, the husband has the right to marry another woman and keep the first who has special rights. However, if she leaves the house to her parent's with the consent of her husband, it is a sign of divorce intention due

to disease. In this context, the husband has to pay back to the wife her money and take her financial responsibility.

- In case of the marital betrayal, i.e., in the confirmed case where the wife is caught sleeping with another man, the husband can break up the marital bond and the woman shall be sentenced to death (Al Hachemi, 1971, p. 120). In case of divorce that is based on betrayal, article 141 provides that the woman who commits an act that destroys her house and abases her man shall not get monetary compensation from the husband; i.e., she loses her financial rights (Rachid, 1973, p. 143).
- In case the wife shows a will for divorce, she resorts to justice if the man commits big mistakes against her such as betrayal. However, if she wants to leave him without logical reason, she shall be sentenced to death because that was an unforgivable sin in the Babylonian law (Fadel & Amer, 1979, pp. 72-73).

The other cases that allow the woman to end up marriage are the absence of the husband, such as when imprisoned. In this case, the end of the relation is determined based on what the husband left for the wife and his children during his imprisonment; i.e., if he left what is enough for them, the wife could not marry another man as she would be sentenced to death if she did, even if she gave birth to a new child from the 2<sup>nd</sup> man, according to articles 134-135 (Cruveilhier, 1938, p. 131).

Besides, Hammurabi Law detailed the issue of the husband's abandonment of the wife. If he has left his country voluntarily, the woman has the right to marry another man and stay with him even if her first husband comes back, as article 136 of Hammurabi Law provides. In addition, article 137 granted the woman the right to children custody after divorce if she was a temple servant or a nun, in addition to half of her husband's wealth. Besides, when she takes care of her little children, she does not have the right to marry another man until the end of the custody period that is devoted for children raising and care (Al Saqa, 1975, p. 417).

Hence, the Babylonian legislator preserved the woman's rights against the coercive divorce and preserved the position of man within the society through the articles that oblige the woman to maintain chastity, exercise her marital and family roles, and not leave her house without logical reasons.

### **Conclusion:**

After tackling various articles of Hammurabi Law that regulate the familial issues, we found out that:

- The Mesopotamian legislation focused on the family law, entity, and protection as Hammurabi law devoted almost ¼ of his articles to the family to show how to establish and end marriage and its aim.
- The legal thought of the ancient Babylonian legislator developed, empowering him to organize the family and set exact provisions.
- We would not exaggerate if we said that the interested in the familial issues in Mesopotamia could easily recognize the developed humanist orientations that include the legal obligations and rules that govern the relations between the family members.
- The protection of the law to the couple is one of the points that draw attention because the law was too fair. It is generally known that the law aims at protecting the weak part in the contractual relation, or at protecting the individual from deviation in the procedural laws.

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