



## **HISTORICAL LEGAL BASIS OF ADOPTION STAGES OF DEVELOPMENT**

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<b>Received:</b> April 6 <sup>th</sup> 2023 <b>Accepted:</b> May 6 <sup>th</sup> 2023 <b>Published:</b> June 11 <sup>th</sup> 2023	This article examines the historical stages of the legal basis of adoption based on Western and Eastern sources. Concepts such as the stages of the historical development of the legal basis of adoption, the requirements for adopters, the formalization of adoption, legal consequences, the rights and obligations of the adopter in relation to the adopted have been scientifically analyzed.
<b>Keywords:</b> Family, child, law, history, stage, society, filial rights, ancient law.	

**INTRODUCTION.** Scientific-theoretical views on adoption The rich past, culture, and tradition of our people go back to the distant past. It is known that the initial social relations in human society are regulated on the basis of customs and traditions, religious education. Many scientists who researched the history of statehood and law development, political and legal doctrines in our country refer to "Avesta" as the first foundation. In addition, adoption has been historically known for a long time and has gone through the stage of historical development of many centuries. This legal institution with great social functions existed in Ancient Greece, in the tribes of Africa and Oceania, in Ancient Babylon and Rome. It was distinguished by its own characteristics in each historical period.

One of the ancient legal institutions that prioritize placement of children deprived of parental care is adoption. A number of social goals were also achieved by placing children deprived of parental care. For example, adoption provided a new labor force for the household, especially in rural areas, and provided the adopter with the opportunity to have a helper and breadwinner when he was old.

The founder of the Zoroastrian religion and the product of centuries-old creativity of the peoples of Central Asia, Azerbaijan, Iran, and the Near and Middle East, especially Khorezm, was a valuable source for studying the history of the emergence and development of the socio-political, moral-refined and moral-educational views of several peoples. The author of "Avesta" book Spitama Zaradushtra gives very interesting information about family life[1.21.].

In "Avesta" it is emphasized that human duty is not only to learn moral guidelines, but also to think about family life, good husband and children. At that time, men could marry at the age of 16 and have the right to have more than one wife. All the time the first wife was the head of others [2.80.]. According to the "Avesta", a man must first of all be physically and

materially strong to get married. For this, it is necessary to eat on time, otherwise a man cannot fulfill his service and moral duties. "A person who does not eat or drink does not have the strength to obey, does not have the strength to fulfill the duties of a wife, cannot give birth to a child" ("Yasna", chapter 33.3).

In general, in Zoroastrianism, family duty and child education have a special place. At this point, it is appropriate to quote the opinion of "Avesta" researcher H. Hamidov: "Even if a man has the ability to leave offspring, but if he does not marry, he will be branded or forced to walk around with a chain tied around his waist. Sometimes such a man was put in a bag and beaten. In "Avesta" it is forbidden for relatives to start a family with each other. This was done to keep the blood of the people and clan clean and the generation flawless. It is noted that families with many children should be given allowances at the expense of the state, and it is said that women who give birth to 2-3 children at a time deserve to receive a reward" [3.93.].

**LITERATURE REVIEW.** The patriarchal family was considered the earliest historical form of the family in the peoples of Central Asia. This family was also the main production team of the society at the same time. Therefore, special attention was paid to family relations and behavior of each family member. In Central Asia, the patriarchal family arose in the first millennia before our era. Its most developed period corresponds to the first centuries of our era. The division of the family and the formation of small families began in the middle of the first millennium AD and continued almost until the 20th century[4.16.].

The earliest legal document on adoption dates back to the laws of the Babylonian king Hammurabi. It states that "if a person adopts a neglected young child



and brings him up, this foster child cannot be taken back through the court" [5.20].

In ancient times, adoption was intended to continue the generation, to receive inheritance, to remain in the family and to have additional labor force in household work.

In ancient Rome, adoption as a legal institution passed its critical stage of development and continued to improve. "The religious roots underlying the ancient family demanded to maintain the sanctity of the household and to serve it"[6.203.]. For this reason, every head of the family had to have an heir and leave him behind. According to religious tradition, if the head of the family does not have a son, he demanded to accept a stranger's son into his house by adoption. Later, adoption changed from a religious institution to a noble institution. Because it served as a means of supporting the generation of distinguished patricians, as well as replenishing and renewing the patrician himself from the representatives of the middle and lower classes[7.].

In ancient Rome, adoption was considered as the establishment of paternal authority over alien children and the establishment of kinship-like relations[8.]. One of the characteristic features of this period was "legalization" aimed at one of the artificial methods of establishing paternal authority, along with adoption. The essence of "legalization" was that as a result, only children born in the concubine and her own children were legalized. Paternity could be established not only for children born during marriage, but also as a result of adoption of alien children.

**RESEARCH METHODOLOGY.** Two methods of adoption were used. The first method is arrogatio, that is, a person with status familiae is adopted, and the second is adoptio, in which the adoptee belongs to a foreign right. The first form of adoption, arrogatio, was carried out publicly in a public gathering, with the presence of the adopter and the adoptee. "The Romans, desiring to adopt their own citizen, announced it in the assembly of the people, and its sanction was deemed sufficient for the purpose.

The second method, adoptio, was carried out by triple emancipation based on the laws of Table XII, which meant that the head of the family changed. Adoption in this way led to the severance of blood relations with the previous family and the establishment of blood relations with the adopter.

In ancient Rome, the conditions for adoption were:

a) as a rule, only a man is allowed to adopt (and women are allowed in exceptional cases, if he had a child before adoption and lost it);

b) the adopter must be independent (sui iuris);

c) it is considered that the adopter must be 18 years older than the adoptee (as in the case of adoption). In case of adoption, compliance with the interests of the adoptee was checked by the magistrate according to the case [9.58.].

In ancient Rome, adoption was intended to introduce a cognate family into an agnate family or to legitimize children born out of wedlock. For the Romans, adoption meant that in the person of the adoptee he would carry on his affairs on his behalf, become an heir in his political and religious affairs, in other words, he would have an heir.

The question of defining the family name is considered important in Islamic law, and in the family, whether it is new or old, halal and haram issues should always be in the center of attention. Because this issue affected the upbringing, behavior and future of the child. Non-intermingling of lineages, that is, a person not marrying his mahram, was considered the main condition of marriage. For this reason, attention is paid to nasab, so that a person knows who he is and his place. In Islamic law, a child born during a legal marriage, born within a period of at least 6 months and at most one year after the dissolution of the marriage, is given the surname of the father. At the same time, Islamic law allows determining the lineage through the court in cases of dispute[10.37.].

**CONCLUSION/RECOMMENDATIONS.** The main reason for adoption in Islam is based on reality. Firstly, accepting a child of foreign descent into the family and not determining his mahram with non-mahram women; secondly, it is also a very important issue that one day, when the orphaned child finds out about his offspring, it will have a negative effect on his psyche; thirdly, adopting a child deprived of parental care, raising him and bringing him to adulthood is a very responsible task, and the circumstances of failure are also taken into account.

According to Islamic law, if the mother of a young child dies, then the right to treasure (or raise the child) passes from the mother to the grandmother. Because the right to treasure belongs first of all to the mother and it is determined that it originates from her. If the maternal grandmother is not alive, the right to treasure should be transferred to the paternal grandmother in preference to all other relatives. Because the baby's (maternal) grandmother is the same as the baby's mother[11.]. In addition, unlike other relatives of the child, he is more concerned about his offspring.

If there is no grandmother, the baby's sister will have priority over the aunts and uncles of the child's mother and father. In this case, the right of the birth sister is superior to that of the step-sister. Maternal aunts are preferred over paternal aunts in



property rights. This right becomes void when a woman marries a foreigner. This right arises again when the marriage is annulled and other obstacles are removed.

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