

Priority of Preferential Claims in Iranian and Iraqi Law

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This study conducts a comparative examination of the system governing the ranking of preferential claims in Iranian and Iraqi law. Preferential claims, as an exception to the principle of equality among creditors, play a fundamental role in balancing the protection of vulnerable groups with the preservation of transactional security. The principal research question addresses whether the current hierarchy of preferential claims in the two legal systems demonstrates sufficient coherence, fairness, and efficiency. In Iranian law, the ranking of preferential claims is dispersed across multiple statutes, including the Civil Code, the Law on Administration of Bankruptcy Affairs, the Law of Non-Litigious Matters, and the Enforcement of Civil Judgments Act. This legislative fragmentation has resulted in certain claims being placed in a “zero rank” or extraordinary priority position, granting them precedence over all other claims, including secured claims such as mortgages and pledges. The traditional five categories—workers’ claims, claims of legally incapacitated persons, physicians’ claims, family law claims, and other creditors—are subject to numerous exceptions. Tax debts and claims of the Social Security Organization also fall outside these classical categories, generating significant doctrinal complexity. Major conflicts arise from inconsistencies between mortgage rights and statutory privileges, variations in temporal and monetary limits across different laws, and the outdated nature of statutory financial ceilings. In Iraqi law, by contrast, the Civil Code provides a more structured framework. Article 1362 establishes a general rule for resolving conflicts among preferential claims and divides privileges into three categories: general privileges over all assets, special privileges over movable property, and special privileges over immovable property. General privileges include workers’ wages, suppliers of essential living necessities, and maintenance obligations, typically limited to the preceding six months. Judicial expenses occupy the highest rank of priority. Nevertheless, a fundamental contradiction emerged following the suspension of tax debts in 2004, which resulted in their demotion from a higher priority level to the lowest rank within the hierarchy, illustrating the vulnerability of the system to political developments. The comparative analysis demonstrates that both systems confront a common challenge: achieving equilibrium between social justice considerations and transactional security. The Iranian system suffers from a lack of structural coherence but provides stronger protection for certain vulnerable groups, particularly maintenance creditors. The Iraqi system benefits from clearer legislative organization; however, the sudden suspension of tax debts reveals institutional fragility under shifting policy environments. Both legal regimes are affected by outdated regulations, failure to update monetary thresholds, and the absence of comprehensive socio-economic legislative evaluation. The principal findings indicate that the current prioritization mechanisms in both jurisdictions are influenced more by macroeconomic and political considerations than by principles of distributive justice. Certain exceptional privileges—such as maritime liens and preferential rights of bank depositors—may produce excessive protection, potentially undermining the rights of genuinely vulnerable creditors. Furthermore, the absence of a comprehensive bankruptcy law in Iran and the instability of legislative policy in Iraq contribute to legal uncertainty and inconsistent judicial outcomes.

Keywords: *Preferential claim, ranking of creditors, privileged debt, right of priority, equality of creditors principle.*

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1. Introduction

Determining the priority of payment among creditors constitutes one of the fundamental issues in civil and commercial law, directly affecting distributive justice, transactional security, and economic efficiency. The general principle in law is the equality of creditors in satisfying their claims from the debtor's assets; however, different legal systems have introduced "preferential claims" as exceptions to this principle. These exceptions, which grant certain creditors priority in payment, are justified on various grounds, including protection of vulnerable groups, encouragement of credit extension, preservation of public interests, and the connection between the claim and the creation or preservation of the debtor's property (Izanloo & Mirshekari, 2013; Karami & Naghibi, 2021).

Iranian and Iraqi legal systems, both influenced by Islamic jurisprudence, have established complex frameworks governing preferential claims. In Iranian law, multiple statutes address such rights, while the Iraqi Civil Code devotes detailed provisions to the types and hierarchy of privileges. Despite the importance of this issue, comprehensive comparative studies critically analyzing the ranking of preferential claims in both systems remain limited. Existing research has generally been confined to descriptive examination of national regulations and has rarely evaluated the coherence, fairness, and efficiency of these systems. This research gap is particularly significant given that the current preferential-claim regimes in both countries face serious challenges, including fragmentation and conflict among legal provisions, obsolescence of certain rules, mismatch between statutory monetary ceilings and economic realities, and the absence of an appropriate balance between protection of vulnerable persons and preservation of transactional security (Al-Sanhuri, 1970; Sadeghloo & Rajabi, 2021).

The present study seeks to address this gap through a comparative and critical analysis of the system governing the ranking of preferential claims in Iranian and Iraqi law. The principal research questions are whether the existing priority systems in both countries possess sufficient legal coherence and what similarities and differences characterize the two legal regimes.

The research methodology is descriptive, analytical, and comparative. First, through documentary and library-

based study, the regulations relating to preferential claims in both jurisdictions are identified and analyzed. Subsequently, adopting a critical approach grounded in theories of distributive justice and economic efficiency, the strengths and weaknesses of each system are evaluated and reform proposals are presented.

The importance of this study lies in its contribution not only to a deeper understanding of the legal systems of two neighboring countries sharing common cultural and legal foundations but also in providing practical guidance for legislators, judges, and legal scholars seeking to reform and improve these systems. Furthermore, by offering a scientifically grounded critical analysis, the study facilitates academic dialogue concerning the balance between social justice and economic efficiency within the law of privileges.

The structure of the article is organized as follows. Following this introduction, the first section examines in detail the types and hierarchy of preferential claims in Iranian law. The second section analyzes the corresponding framework in Iraqi law. Finally, the conclusion presents the comparative evaluation and critical analysis of both systems along with proposed reforms.

2. Types and Hierarchy of Preferential Claims in Iranian Law

By recognizing various claims as preferential claims across different statutes, the Iranian legislator has made the construction of a unified hierarchy of preferential claims particularly difficult. To resolve these conflicts, attention must be paid to the substantive and temporal scope of the relevant laws, since conflicts among preferential claims largely arise from inconsistencies between multiple legislative provisions governing creditor rights (Izanloo & Mirshekari, 2013). Some preferential claims under Iranian law confer only a right of priority, whereas others grant both priority and a right of pursuit. Accordingly, the first discussion addresses preferential claims possessing only priority rights, while the second discussion examines preferential claims that combine priority with the right of pursuit.

3. Preferential Claims with Priority Only

This discussion addresses preferential claims that confer only priority of payment, including funeral and burial

expenses of the deceased, workers' wages, claims of legally incapacitated persons in cases of bankruptcy or death of a guardian or executor, claims of physicians and pharmacists, the wife's dower and maintenance, maintenance of children, claims of bank depositors, tax debts, and claims of the Social Security Organization. Each category will be examined separately.

3.1. *Funeral and Burial Expenses of the Deceased*

Upon death, funeral and burial expenses take precedence over other debts and obligations. This rule is derived from Article 869 of the Iranian Civil Code, which provides that the rights and obligations attached to the estate must be discharged prior to its distribution. Likewise, Article 225 of the Law of Non-Litigious Matters stipulates that debts owed by the deceased shall be paid from the estate only after covering funeral, burial, and preparation expenses, as well as other necessary costs such as preservation and administration of the estate.

The central interpretive issue lies in the first clause of Article 869, where the "cost of the shroud of the deceased" is mentioned alongside "rights attached to specific estate assets, such as mortgaged property," connected by a conjunctive expression. This wording has generated two distinct interpretations. A literal interpretation suggests that the cost of the shroud and secured rights occupy the same rank, meaning neither has priority over the other. In contrast, a teleological interpretation considers the cost of the shroud to take precedence over secured rights, arguing that the legislator merely grouped these items as obligations to be satisfied prior to ordinary debts rather than placing them on an equal hierarchical level. Under this interpretation, funeral expenses—due to their religious necessity and social importance—take precedence over all debts, including those of secured creditors (Al-Sharqawi; Sawar, 2006).

One weakness of Article 869 is that it refers solely to the "cost of the shroud" and fails to mention other necessary expenses such as burial, preparation of the body, ritual washing, and related obligations. Additionally, the provision referring to "debts and financial obligations of the deceased" makes no distinction among different categories of debts. This stands in contrast to later legislation, such as the Law on Administration of Bankruptcy Affairs and the Law of Non-Litigious Matters,

where debts are classified into different categories with varying priorities.

In order to remedy the deficiencies of Article 869 of the Civil Code, the legislator supplemented this rule through the Law of Non-Litigious Matters. Article 225 addresses funeral-related expenses more precisely and functions as a subsequent and special law interpreting and completing Article 869. The use of the phrase "after the expenses of shrouding, burial, and preparation of the deceased" explicitly indicates that debts must be paid only after these expenses have been satisfied, rather than concurrently or at the same rank. A second important feature is the expansion of covered expenses from merely the shroud to include burial and preparation, reflecting practical realities and social needs. However, the reference to "other necessary expenses such as preservation and administration of the estate" introduces significant ambiguity, as the legislator has failed to define clear standards or limitations governing such expenses.

3.2. *Preferential Claims of Workers*

The Labour Law of 1958, the Law on Enforcement of Civil Judgments (in enforcement proceedings), the Law of Non-Litigious Matters (in cases of death), and the Law on Administration of Bankruptcy Affairs (in cases of bankruptcy) all emphasize the priority of workers' claims over other creditors. According to Note 1 of Article 13 of the Iranian Labour Law, workers' claims are classified as preferential debts. Likewise, Article 58 of the Law on Administration of Bankruptcy Affairs places workers' claims within the first class of creditors and divides them into three categories: wages of domestic servants for the last year preceding cessation of payments; wages of employees of the bankrupt enterprise for six months prior to cessation; and wages of daily or weekly workers for three months preceding cessation. This classification demonstrates that the legislator has differentiated among categories of workers based on the nature and stability of employment relationships (Ahmadi, 2018; Sadeghloo & Rajabi, 2021).

Article 226 of the Law of Non-Litigious Matters repeats the same classification and temporal limits concerning the estate of a deceased person, substituting the phrase "prior to death" for "prior to cessation." However, Article 148 of the Law on Enforcement of Civil Judgments adopts

a different approach. Paragraph two of this provision grants domestic servants, workers, and employees of the debtor priority regarding six months of unpaid wages. The first ambiguity arises from the apparent conflict between temporal limits: while bankruptcy and probate laws recognize only three months of preferential wages for daily workers, enforcement law extends protection to six months. The second ambiguity concerns the concept of “domestic servants.” It remains unclear whether this category is limited to individuals performing household duties such as cleaning, cooking, or childcare, or whether it extends to personal drivers, gardeners, guards, and similar occupations. Because the statute provides no precise definition, courts must determine its scope according to custom and the specific circumstances of each case. A third ambiguity relates to the expression “employees of the enterprise,” raising the question of whether it includes only administrative and commercial staff or also industrial workers employed in factories and workshops.

An important issue concerns the relationship between workers’ claims and secured creditors. Article 58 of the Law on Administration of Bankruptcy Affairs provides that secured creditors have priority over the proceeds of the sale of collateral. It then states that unsecured claims, as well as any unpaid balance of secured claims, shall be ranked according to the five statutory classes. At first glance, this wording suggests that secured creditors take precedence over workers. Nevertheless, subsequent legislation recognizes significant protection for workers’ claims even against powerful preferential creditors. From a systematic interpretation of the legal framework governing accessory rights in rem and preferential debts, it may be argued that at least part of workers’ claims enjoys protection comparable to secured interests, reflecting the legislator’s strong social policy favoring wage protection (Al-Sanhuri, 1970; Sawar, 2006). This approach indicates that safeguarding workers’ livelihoods constitutes a central objective of preferential-debt regulation.

3.3. Preferential Claims of Legally Incapacitated Persons

The Law on Administration of Bankruptcy Affairs and the Law of Non-Litigious Matters expressly address the preferential claims of legally incapacitated persons, whereas the Law on Enforcement of Civil Judgments remains silent on this issue. Under these statutes, claims

arising from guardianship or custodianship relationships are placed within the second class of preferential claims. In cases of death, however, such claims are satisfied after funeral expenses and workers’ wages, effectively occupying the third level of payment priority.

For these claims to retain preferential status, bankruptcy or death must occur during the period of guardianship or within one year following its termination. After the expiration of this one-year period, the claims of incapacitated persons lose their preferential character and are treated as ordinary claims participating proportionally in the distribution of assets among creditors. This legal position demonstrates that the legislator attaches considerable importance to protecting incapacitated persons, yet still ranks them after workers, suggesting that wage protection has been considered a more urgent social priority within the hierarchy of creditor protection (Karami & Naghibi, 2021).

3.4. Preferential Medical and Therapeutic Claims

The Iranian legislator granted priority status to physicians’ and pharmacists’ claims during historical periods marked by widespread infectious diseases, when medical professionals frequently provided treatment on credit under difficult conditions. The aim was to ensure continued access to medical services by guaranteeing repayment priority for healthcare providers (Ahmadi, 2018).

Notably, the Law on Enforcement of Civil Judgments does not refer to medical preferential claims. However, both Article 58 of the Law on Administration of Bankruptcy Affairs and Article 226 of the Law of Non-Litigious Matters place physicians’ and pharmacists’ claims within the third class of preferential debts. The placement of medical claims ahead of family claims—such as maintenance and dower—raises significant normative questions. Both provisions limit medical claims to services rendered within one year prior to cessation of payments or death, without distinguishing between types of medical services. This temporal limitation differs from that applied to workers’ claims. Although medical claims take precedence over family and ordinary creditors, they remain subordinate to workers’ and incapacitated persons’ claims. The rationale behind this ranking is open to criticism, as physicians may arguably

be less in need of special protection than other socially vulnerable groups.

3.5. *Preferential Claims Relating to Spousal and Child Maintenance and the Wife's Dower*

Article 58 of the Law on Administration of Bankruptcy Affairs places the wife's maintenance and dower within the fourth class of preferential claims. Maintenance is recognized as a preferential debt pursuant to Article 1206 of the Civil Code, while preferential status for the dower is subject to statutory limitations. The monetary ceiling established for the preferential portion of the dower has become outdated and no longer reflects contemporary economic realities, indicating a need for legislative reform (Sadeghloo & Rajabi, 2021).

Article 1206 of the Civil Code provides that a wife may claim unpaid maintenance for past periods and that such maintenance constitutes a preferential debt ranking ahead of ordinary creditors in cases of insolvency or bankruptcy of the husband. Article 1203 further establishes an internal family hierarchy by granting priority to the wife's maintenance over other dependents entitled to maintenance. Additionally, family protection legislation recognizes the precedence of maintenance obligations toward the wife and children over ordinary debts.

In matters relating to deceased estates, Article 226 of the Law of Non-Litigious Matters places maintenance and the wife's dower within the fourth class of preferential claims, maintaining the same monetary limit applicable in bankruptcy situations. Article 148 of the Law on Enforcement of Civil Judgments introduces another variation by granting priority to six months of maintenance expenses for the wife of the judgment debtor, creating divergence between enforcement proceedings and bankruptcy or probate rules.

Regarding child maintenance, only Article 148 of the Law on Enforcement of Civil Judgments explicitly refers to "expenses for the maintenance of minor children" for a six-month period. Articles 58 and 226 remain silent on child maintenance, creating a significant legislative gap. This silence raises the question of whether child maintenance lacks preferential status in cases of bankruptcy or death. In practice, courts may extend preferential treatment by analogy to spousal maintenance and based on the principle of protecting

minors, yet the absence of explicit statutory recognition remains problematic.

Although Article 1203 establishes a hierarchy within family obligations—placing the wife's maintenance before that of parents or children—this internal ordering does not directly correspond to the statutory ranking of preferential claims among creditors. The apparent inconsistency between family-law priorities and creditor-ranking rules suggests that the legislator has not relied on a single coherent criterion when determining priority levels. Furthermore, Article 1206 states that the wife's maintenance takes precedence over "creditors," a phrase that may appear to grant absolute priority. However, when interpreted alongside Articles 58 and 226, the prevailing view is that the term refers only to ordinary creditors rather than all classes of preferential creditors.

3.6. *Preferential Claims of Bank Depositors*

Deposits constitute one of the primary financial resources of banking institutions, without which the existence of banks would lack economic justification. Banks employ deposited funds in economic activities and may pay interest to depositors at the end of contractual periods (Daryai & Karbalai Aghazadeh, 2014; Mahdi Pour Saeed et al., 2019). In situations involving suspension of operations or bankruptcy of banks, Article 41(d) of the Monetary and Banking Law of the country (enacted in 1972 and amended through 2013) governs repayment of deposits.

This provision establishes that repayment of savings deposits or similar accounts up to a specified monetary limit enjoys first priority, while current and fixed deposits up to the same amount rank second, both taking precedence over all other obligations of dissolved or bankrupt banks and even over other preferential rights. Consequently, bank depositors occupy a uniquely exceptional position outside the traditional five-class hierarchy recognized in bankruptcy and probate legislation. In practical terms, this rule creates a "zero-rank" or extraordinary priority category that surpasses not only ordinary creditors but also all preferential creditors.

Such prioritization is open to serious criticism from the perspective of distributive justice and protection of vulnerable groups. The primary justification for this exceptional privilege lies in preserving public confidence

in the banking system and preventing systemic financial crises. At the same time, the provision establishes an internal hierarchy among deposits themselves, granting priority to savings deposits—typically held by low-income and middle-class individuals—over current and fixed deposits, which may belong to commercial entities or wealthy individuals. From a social-justice perspective, this internal differentiation appears defensible. The statute explicitly limits this exceptional privilege to situations involving dissolved or bankrupt banks, meaning that the preferential status applies exclusively within the context of bank insolvency and not under ordinary financial conditions.

3.7. *Preferential Tax Claims*

Article 160 of the Direct Taxation Law (as amended in 2015) provides that the Iranian Tax Administration enjoys priority for the collection of taxes and related penalties from taxpayers and persons responsible for payment, as against other creditors, with two express exceptions: holders of rights in respect of the collateralized property, and workers' and employees' claims arising from employment. The legislator has therefore established two clear categories over which tax claims do not take precedence. In practical terms, this means that tax claims occupy an intermediate position: they stand behind secured creditors in respect of the encumbered asset and behind employment-related wage claims, yet they take precedence over other creditors outside these exceptions (Ahmadi, 2018; Sadeghloo & Rajabi, 2021). This ordering is also economically rational, because if tax claims were allowed to outrank collateral, secured lending would become excessively risky, thereby discouraging credit extension and undermining transactional security.

At the same time, the concluding sentence of Article 160—stating that the rule does not prevent collection of taxes attributable to the transfer of the collateralized asset—creates an “exception to the exception.” In other words, although the secured creditor retains priority for the principal secured debt against the sale proceeds, taxes triggered by the transfer of the same collateral must still be satisfied and cannot be disregarded. The underlying rationale is the protection of the state's fiscal interests in collecting transaction-based taxes connected to the disposition of collateral.

A further point is that tax debts do not take priority over bank depositors' preferential claims, because the monetary and banking framework provides that certain deposits outrank “other preferential rights,” which would include tax claims. Accordingly, in bank insolvency scenarios, the tax authority's already limited priority position is pushed even lower, revealing that the hierarchy of public claims is not uniform across insolvency contexts (Daryai & Karbalai Aghazadeh, 2014; Mahdi Pour Saeed et al., 2019).

3.8. *Preferential Claims of the Social Security Organization*

Article 49 of the Social Security Law (enacted in 1975) states that the Organization's claims arising from implementation of the statute are deemed preferential claims. However, the provision does not specify the precise place of this claim within the established hierarchy of preferential classes. This legislative silence has been partially addressed in practice through interpretive guidance, which tends to place the Social Security claim above ordinary debts but below workers' wage claims. The resulting hierarchy indicates that Social Security claims are treated as preferential in principle, yet their operational ranking is weaker than the traditional preferential categories and is typically enforced only as an elevated status vis-à-vis ordinary creditors rather than as a fully integrated class within the five-tier structure (Karami & Naghibi, 2021; Sadeghloo & Rajabi, 2021).

The limited scope of this interpretive ordering is itself problematic. It clarifies priority only within the enforcement framework and does not resolve how Social Security claims relate to the second through fourth preferential classes (incapacitated persons, medical claims, and family claims). Nor does it clearly determine the relationship between Social Security claims and tax debts or bank-depositor priorities. Because the guidance tends to align Social Security claims with the portion of wage claims exceeding protected thresholds—while stating that both enjoy priority over ordinary debts—it can be inferred that Social Security claims are positioned at the lowest level of preferential claims, operating as a residual preference rather than a robust privilege (Al-Sanhuri, 1970; Sawar, 2006).

Notably, Social Security claims are not expressly listed in the statutory provisions that set out the classical five

classes of preferential creditors in bankruptcy and probate contexts. This omission does not necessarily negate their preferential character in bankruptcy or death scenarios; rather, it requires the Social Security Law to be applied as a special statute alongside the general ranking provisions. Nonetheless, the need for this cross-statute reconstruction highlights the broader problem of legislative fragmentation and weak systemic coherence, which can generate practical disputes and unpredictable outcomes.

4. Preferential Claims with Both Priority and the Right of Pursuit

This discussion addresses preferential claims that combine priority of payment with the right of pursuit (pursuit/following of the encumbered asset), including maritime liens, the insurer's preferential claim, claims connected to precautionary attachment, and the seller's right in the event of the buyer's bankruptcy. The following subsections consider these in turn.

4.1. Maritime Preferential Claim

A maritime lien is designed to secure claims of persons who have provided maritime services to a vessel or who have suffered loss as a consequence of the vessel's operation (Abu Ata, 2010; Ramezani, 1992). It is treated as a right in rem under the maritime legal framework, and its defining attributes—priority and the right of pursuit—are explicitly reflected in provisions that preserve the lien notwithstanding changes in ownership and that distinguish it from other registrable rights. These features align with the doctrinal understanding of accessory real rights, where the creditor's entitlement follows the asset and may be enforced against subsequent holders (Hammad Abd, 2019; Sawar, 2006). Maritime legislation enumerates maritime preferential rights in a dedicated chapter and classifies them into several categories, including judicial expenses and preservation costs, crew wage claims, salvage remuneration, collision and personal injury claims, and claims arising from contracts or operations undertaken by the master for the vessel's necessities. A particularly significant rule provides that maritime liens enjoy priority not only over ship mortgages but also over other preferential rights recognized in other laws. This produces an exceptional hierarchy in which maritime

privileges sit above classic secured interests. Under this approach, claims such as repair costs can outrank a previously registered mortgage, meaning that the mortgagee may face dilution of security even where the mortgage was established before the maritime claim arose (Al-Sanhuri, 1970; Ramezani, 1992).

This exceptional priority is subject to strong critique. A mortgage is among the strongest forms of security in ordinary civil law, typically granting the secured creditor precedence over other creditors in the collateral's value. Elevating maritime liens above mortgages increases risk for secured lenders and may undermine transactional security. The standard justification is that certain maritime claims—such as repairs, salvage, and crew wages—directly preserve or enhance the vessel's value, making it equitable that these claims be paid first. This logic resembles the broader theory of priority for claims that contribute to the preservation of the encumbered asset. Yet the justification does not apply equally to all categories of maritime liens, which weakens the normative coherence of the rule (Hammad Abd, 2019; Sawar, 2006).

The priority of maritime liens over “other preferential rights in other laws” is also controversial. One pragmatic justification is the inherently transnational character of maritime commerce and the need to align domestic maritime priority rules with internationally recognized standards to avoid disruption to shipping and trade. Even so, the breadth of the clause creates interpretive tension when other statutes also claim extraordinary priority for particular creditors. The result is a theoretical conflict of preferential regimes and illustrates the broader problem of legislative non-coordination in constructing a consistent priority system.

4.2. Preferential Claim of the Insurer

Article 33 of the Insurance Law (enacted in 1937) provides that the insurer has priority, in respect of the insurance premium, over any creditor against the insured property, even if other creditors hold official instruments. This provision creates an unusually strong and exceptional priority for the insurer, albeit limited in scope: the insurer's priority operates only against the insured asset, not against the entirety of the insured's estate. In effect, it establishes a special preferential right attached to a specific asset, enabling the insurer to

outrank secured creditors (including mortgagees), other preferential creditors, and ordinary creditors with respect to that particular property (Al-Sanhuri, 1970; Sawar, 2006).

The statute does not articulate the policy rationale for this absolute priority. One possible justification is that the insurer, by underwriting the risk of loss of the insured asset, contributes to the asset's economic stability and the insured's ability to participate in commerce; therefore, the insurer should have a privileged position to collect premiums from the very asset whose risk it has assumed. Yet this rationale is not fully persuasive where premiums are unpaid, because the insurer may not have performed any compensatory obligation at that stage. Another possible explanation is developmental: the legislator may have sought to strengthen a nascent insurance sector by ensuring collectability of premiums.

From a distributive-justice perspective, the rule is highly contestable. Granting the insurer—who may not yet have delivered any performance—priority over workers' wages or other socially sensitive claims can conflict with the protective logic traditionally underlying preferential-debt systems. This absolute priority therefore raises difficult questions about the coherence of the hierarchy and the normative criteria used to elevate certain claims above others (Izanloo & Mirshekari, 2013; Karami & Naghibi, 2021).

5. Special Preferential Rights Over Movables and Their Rank

Special preferential rights over movables may either precede general preferential rights or come after them. The following examines each category.

5.1. *Preferential Debts Based on a Special Privilege*

A. Court and Litigation Expenses

Article 1369 of the Iraqi Civil Code provides that litigation expenses incurred for the benefit of all creditors in preserving the debtor's property, selling it, and distributing the proceeds enjoy a privilege over the price of that property. The privileged character and the rank of court expenses are analyzed below.

Litigation expenses consist of costs required by the judicial formalities necessary—legally and procedurally—to preserve the debtor's assets for the

purpose of sale and distribution of the proceeds among creditors. These include, among others, costs of executory and precautionary attachment, guarding and custody, management, dispossession measures, public auction sale expenses, costs of distribution of the proceeds, indirect actions, actions for declaring transactions ineffective against creditors, registration of bankruptcy formalities, and certain non-judicial operational costs that judicial practice treats as unavoidable, provided that these expenditures are made for the collective benefit of all creditors; amicable liquidation expenses are not included (Al-Obaidi, 1999; Al-Sanhuri, 1970). Accordingly, where such expenditures are incurred solely for the benefit of some creditors, they do not take preferential status in this sense.

It is also argued in Iraqi doctrine that attorneys' fees may fall within "litigation expenses" (Al-Obaidi, 1999; Al-Sanhuri, 1970). Under the relevant framework, an attorney's fee can be treated as a first-degree privileged debt in relation to what accrues to the client from assets generated by the litigation or the work that constitutes the subject matter of the mandate. Consequently, if an attorney represents a creditor in an action challenging the effectiveness of a debtor's transaction detrimental to creditors, or pursues an indirect action and other creditors benefit from the result, the attorney's fee—linked to the litigation effort—may be regarded as part of the litigation-cost privilege, giving the attorney privileged status vis-à-vis all creditors who have benefited (Abd al-Baqi, 1954).

Iraqi legal opinions differ as to the "location" of the privilege for litigation expenses. One view considers that the privilege attaches to the price (the sale proceeds) of the sold assets; under this analysis, the privilege is a special privilege over movables, namely the proceeds, whether the enforcement measures were taken against immovable property, specific movable property, or against the entirety of the debtor's assets. Another view argues that the privilege attaches to the asset against which measures were taken; thus, it is special if measures were directed to a specific movable or immovable, but general if measures were directed to all assets. The first view is stronger, because the privilege operates over the proceeds rather than the asset itself, and the practical effect of priority becomes apparent only upon sale and realization of the price (Sawar, 2006).

Article 1369(2) further provides that these expenses are collected before any other debt, even if the competing debt is itself privileged or secured by a mortgage, and that expenses incurred for preserving assets and selling them take precedence over expenses incurred in distribution procedures. This means that litigation expenses occupy the first rank among all privileges: no privilege, even one secured by a mortgage or another preferential right, outranks them. It also means that creditors who advanced preservation-and-sale expenses outrank those who advanced distribution expenses; however, among multiple creditors within the same subgroup (e.g., several preservation-and-sale creditors), no one has priority over another, and satisfaction is proportional within the same rank (Al-Sanhuri, 1970; Hammad Abd, 2019).

B. Amounts Due to the Public Treasury

Article 1370 provides, first, that amounts due to the treasury by way of taxes, duties, and similar public charges enjoy a privilege subject to the conditions laid down in the applicable regulations; and second, that these amounts are collected from the price of the assets subject to this privilege—regardless of whose hands they are in—after litigation expenses and before any other right, even if the competing right is privileged or secured by a mortgage. Thus, public charges such as income tax, property-related taxes, customs duties, and service-related levies are treated as privileged debts. However, proceeds from the sale of state-owned assets or the rent of such assets do not fall within this privilege; in those cases, sale proceeds follow the seller's privilege and rent follows the lessor's privilege (Sawar, 2006).

This treasury-related privilege includes the ability to follow the asset and collect ahead of other creditors, but the rule of possession in movables can limit this pursuit effect, reflecting the general principle that possession serves as a strong indicator of title in movable property. In parallel, customs administration rules recognize a broad privilege for the collection of customs rights, fines, confiscations, refunds, taxes, and other levies, even in bankruptcy, ranking ahead of all debts except preservation-related debts and litigation expenses. The privilege attaches to the price of the assets subject to it, and it may apply either across all assets (for example, general income taxes) or to a specific immovable (such as property tax) or a specific movable (such as customs duties levied on imported goods). In the latter cases,

these are treated as special preferential debts over movables (Al-Obaidi, 1999; Al-Sanhuri, 1970).

Within the statutory ordering, this privilege is generally placed second after litigation expenses and outranks all other rights, even those secured by mortgage or other privileges. Iraqi legislative adjustments in enforcement rules have at times treated this treasury privilege as a first-degree privileged debt payable before any other debt, even if privileged or secured; likewise, customs-law provisions place the state's claim ahead of most debts, excluding preservation-related debts and litigation expenses, thereby producing a multi-layered and sometimes shifting hierarchy for public claims (Al-Sanhuri, 1970; Mahdi, 2013).

C. Preservation and Repair of Movable Property

Article 1372 provides that sums spent to preserve a movable and what is necessary to repair it enjoy a privilege over the whole of that movable. This includes, for example, expenses incurred to prevent deterioration or destruction of an item, the remuneration of a repairer, costs of feeding and treating animals, and guarding fees for protecting assets. By contrast, expenses spent merely to improve or beautify an item—even if they increase its value—do not fall within this category (Al-Sanhuri, 1970). This privilege belongs to the person who paid the costs, not necessarily to the person who physically performed the work (Hammad Abd, 2019).

The privilege attaches to the entire movable for which the preservation or repair expenses were incurred and is not limited merely to the increment in value. It persists so long as the movable retains its essential identity and characteristics. If the movable changes its legal nature and becomes part of immovable property—for example through construction and incorporation—the privilege is extinguished. Moreover, because the governing principle for movables favors the good-faith acquirer in possession, a creditor holding a privilege over a movable may not be able to invoke that privilege where ownership of the movable has transferred to a good-faith possessor, reflecting the limiting effect of the possession rule on pursuit rights in movables (Al-Sanhuri, 1970; Hammad Abd, 2019).

5.2. Special Preferential Rights Ranked After General Preferential Rights

A category of privileges applies to movable property but is ranked after general privileges.

A. Privilege for Agricultural Expenses and the Price of Agricultural Tools

This heading in fact concerns two distinct privileges rather than a single unified right.

First, sums expended on agricultural operations and harvesting are addressed in Article 1373(1) of the Iraqi Civil Code, which provides that amounts spent on seeds, fertilizer, strengthening materials, pesticides, and other cultivation and harvesting expenses create a privilege over the crop whose production required those expenditures. This encompasses all costs incurred to produce the agricultural output, including expenses such as plowing, irrigation, hiring livestock, irrigation operations, and cleaning irrigation canals (Al-Obaidi, 1999). Under Article 1373(2), these amounts are deducted from the value of the crop in accordance with the statutory distribution rules.

The Price of Agricultural Tools

Article 1373(3) of the Iraqi Civil Code addresses this privilege by providing that amounts due in consideration for agricultural tools enjoy a privilege of the same rank as the tools themselves. The subject matter of this privilege includes sums paid for the purchase of tools, equipment, and machinery used in land preparation and crop production, as well as costs of their repair and maintenance. This privilege is placed in the same rank as the sums expended for agricultural operations and harvesting.

The rank of these two privileges is identical, and they are placed in the fifth rank. This follows from Article 1373(2) and (3). Paragraph (2) provides that after deduction of litigation expenses, amounts due to the public treasury, preservation and repair costs, and sums benefiting from a general privilege, the agricultural expenses are deducted immediately from the crop's value, and the remainder is distributed among creditors proportionally. The agricultural-expense privilege attaches to the crop and is satisfied from its price, whereas the privilege for the price of agricultural tools attaches to the tools themselves. Where multiple creditors compete on agricultural expenses (such as seeds and fertilizer) and the crop price is insufficient, they are paid proportionally; similarly, multiple creditors on the tools privilege are paid proportionally according to the value of their claims (Al-Obaidi, 1999; Sawar, 2006).

B. The Lessor's Privilege Over Movables Located in the Leased Premises and Agricultural Lands

Article 1374(1) provides that rent and other rights the lessor is entitled to claim from the tenant under the lease create a privilege over attachable movables and agricultural products located in the leased premises. This privilege covers rent for buildings and agricultural lands under a valid lease contract within the legally protected period; beyond that period, the debt is treated as ordinary and the creditor is subject to the equality principle. The privilege belongs to the lessor irrespective of whether the lessor is the owner or a head-tenant. Its "location" is the tenant's attachable movables and agricultural products that were brought into the leased premises at the outset or during the lease term. Article 1374(2) adds that if the lease expressly prohibits subleasing, the lessor's privilege extends to movables belonging to the subtenant as well.

Under Article 1374(2), the privilege may attach to the subtenant's movables and agricultural products where the principal lease explicitly prohibits subleasing. If no such prohibition exists, the lessor's privilege is limited to amounts the subtenant owes the principal tenant, and the lessor must have notified the subtenant not to pay those amounts to the principal tenant. Thus, where the tenant subleases and the subtenant brings in his own movables, the lessor will have priority over those movables only if the original lease barred subleasing; otherwise, the lessor's priority operates only over the subtenant's debt to the principal tenant, provided notice has been given.

Article 1374(3) provides that if privileged assets are removed from the leased premises contrary to the lessor's objection and without the lessor's knowledge, and the remaining assets are insufficient to cover the privileged amounts, the privilege continues over the removed assets—without prejudice to rights acquired by a good-faith third party. This indicates that, for the privilege to persist and for the lessor to enjoy a pursuit-like effect, removal must have occurred without the lessor's knowledge and consent; if removal occurs with knowledge and consent, the privilege is extinguished. Even where the privilege persists, it is not enforceable against a good-faith acquirer of the movables, which reflects the limiting force of good-faith acquisition in movables (Hammad Abd, 2019). The rank of the lessor's privilege is the sixth rank after the preceding privileges,

unless certain earlier privileges cannot be asserted against the lessor as a good-faith person under the governing rules (Al-Obaidi, 1999; Al-Sanhuri, 1970).

C. The Hotelkeeper's Privilege

Article 1375(1) provides that amounts due to the hotelkeeper from the guest for room rent, food costs, and other expenses create a privilege over the guest's property and belongings brought into the hotel. The provision indicates that this privilege is confined to hotelkeepers and innkeepers providing lodging (with or without food) and does not extend to restaurants or cafés. It secures the hotelkeeper's entitlements against the guest for accommodation charges, food, and other costs incurred for the guest.

The subject matter of this privilege includes items the guest or companions brought into the hotel, such as clothing, jewelry, vehicles, and animals. There is a presumption that these items belong to the guest; however, if the items belong to another person, the hotelkeeper may still rely on the privilege provided he acted in good faith—meaning he did not know the items belonged to someone else—unless the items are stolen or lost. If privileged items are removed from the hotel, the privilege continues and the hotelkeeper may pursue them only where removal occurred without the hotelkeeper's knowledge and consent. As with the lessor's privilege, the hotelkeeper's privilege is not enforceable against a good-faith acquirer of the items. Article 1375(4) places the hotelkeeper's privilege in the sixth rank, the same rank as the lessor's privilege; if the two privileges conflict, priority goes to the one that arose earlier in time, unless the later privilege is shielded by good-faith possession such that the earlier privilege cannot be asserted against it (Hammad Abd, 2019; Sawar, 2006).

D. The Seller's Privilege Over Movable Property

Article 1376(1) provides that whatever the seller of movable property is owed in respect of the price and its accessories creates a privilege for the seller over the sold goods, and that this privilege remains so long as the sold goods retain their essential identity. This operates without prejudice to rights acquired by good-faith third parties and subject to special rules governing commercial actions. The seller's privilege means that the seller may, so long as the sold goods retain their original nature, assert a priority right over those goods to satisfy

any outstanding portion of the price and related entitlements (Ismail Ibrahim & Obeid, 2018).

This privilege applies in cases where all or part of the price remains unpaid and also covers amounts the seller paid on the buyer's behalf. However, it does not extend to damages. It also does not apply to a seller who delivered different goods in substitution, to a seller of fungible goods sold before segregation, or to a seller who sold on credit while retaining title until full payment. Under this privilege, the seller has priority over other creditors in being paid from the goods' value and also enjoys a pursuit effect, allowing the seller to follow the goods in whose hands they are, subject to the protection of good-faith third-party rights. The rank of the seller's privilege is the seventh rank, following the lessor's and hotelkeeper's privileges. Nevertheless, if the lessor or hotelkeeper knew of the seller's right when the goods were brought into the leased premises or hotel, the seller takes priority over them with respect to those goods (Al-Sanhuri, 1970; Ismail Ibrahim & Obeid, 2018).

E. The Co-Owner's Privilege in Undivided Movable Property

Article 1377 provides that where co-owners partition a movable held in common, each co-owner's right of recourse against the others arising from the partition—specifically, the entitlement to receive the equalizing adjustment—is secured by a privilege over the shares allotted to the other co-owners. This privilege applies to all forms of partition, whether consensual or judicial, complete or partial, and regardless of whether the common ownership arose through inheritance or otherwise. The privileged claim is the "adjustment" (equalizing payment) required to equalize the value of shares. For example, if two co-owners divide two cars of unequal value and each takes one car, the person who takes the more valuable car must pay an equalizing amount to the other so that their shares are equalized. The location of this privilege is the shares allocated to the other co-owners, and Article 1377(2) places this privilege in the seventh rank—the same rank as the seller's privilege. If the two privileges conflict, priority is determined by the older date of creation (Al-Obaidi, 1999; Sawar, 2006).

6. Special Privileges Over Immovable Property and Their Ranks

Special privileges over immovable property are privileges established over a specific real estate asset belonging to the debtor. Iraqi civil law recognizes three principal categories of such privileges.

6.1. *The Seller's Privilege Over Immovable Property*

Article 1378 of the Iraqi Civil Code provides that all amounts owed to the seller of immovable property (or the transferor thereof) in respect of the price and its accessories constitute a privileged claim over the sold property. The provision further stipulates that this privilege must be registered in the land registry and becomes effective only from the date of registration. From this rule, it follows that the privilege covers the purchase price, related expenses, and agreed benefits, while excluding compensation for damages. Performance by substitution and exchange contracts are treated similarly to sale transactions, provided that one party remains obligated to pay a monetary difference; such a difference assumes the legal character of the price and therefore benefits from the seller's privilege (Al-Sanhuri, 1970).

The object of the privilege is the immovable property itself. Where the subject of sale consists of a co-ownership share in a property, the privilege attaches exclusively to that share. The ranking of this privilege depends entirely on the date of its registration in the land registry, reflecting the central role of publicity and registration in real property security rights within Iraqi law (Al-Obaidi, 1999).

6.2. *The Privilege of Engineers and Contractors*

Article 1379 establishes a privilege in favor of contractors and architectural engineers for amounts owed to them for constructing, reconstructing, repairing, or maintaining buildings or other installations. This privilege extends only to the extent that the works performed have increased the value of the property at the time of sale. Accordingly, the contractor's or engineer's privilege is limited strictly to the value added through their work.

The privilege attaches to the constructed or repaired installation itself rather than to the land upon which the structure stands. A necessary condition is that the

building or installation remains in existence; if the constructed structure is demolished, the privilege ceases to exist. For example, if a contractor adds a second floor to an existing building, the privilege applies solely to the added floor rather than to the entire building's value (Hammad Abd, 2019).

The rank of this privilege is determined by the date of its registration in the land registry. To establish the privilege, an official instrument documenting the work performed and the sums owed must be prepared and registered accordingly. Although ranking generally depends on registration chronology, Article 1379(3) grants the contractor or engineer exceptional priority over mortgage creditors—even where the mortgage was registered earlier—provided that the mortgage covers the land or installations on which the construction works were carried out, whether the mortgage is possessory or non-possessory. This rule reflects legislative recognition that construction activity directly enhances the value of the secured property and therefore merits elevated protection (Al-Sanhuri, 1970).

6.3. *The Privilege Arising From Partition Among Co-Owners*

Article 1380 regulates a privilege that arises when jointly owned immovable property is partitioned among co-owners. The provision guarantees each co-owner's right to claim the adjustment amount (equalizing payment) determined in the partition agreement through a privilege over the shares allocated to the other co-owners. The purpose of this privilege is to ensure equitable distribution among co-owners when the division of property results in unequal shares.

The privileged claim concerns the equalization amount payable to the co-owner who received a lesser share in value. This amount is established within the partition agreement itself and applies regardless of whether the partition is consensual or judicial. The privilege secures the financial balance of the partition by guaranteeing payment from the immovable property allocated to the debtor co-owner (Al-Sanhuri, 1970).

The location of this privilege is limited to the immovable assets assigned to the co-owner obligated to pay the equalization amount. It does not extend to properties allotted to other co-owners who bear no payment obligation. As with other real-estate privileges, registration in the land registry is mandatory, and the

rank of the privilege is determined from the date of registration, thereby ensuring certainty and transparency in competing real rights (Al-Obaidi, 1999).

7. Conclusion

The system of privileged claims in Iranian law is the result of the enactment of numerous statutes adopted at different historical periods without reliance on a unified theoretical framework and without sufficient legislative coordination. This situation has produced a complex structure that is, in certain respects, internally inconsistent. The most fundamental weakness of the current framework lies in the absence of a single comprehensive hierarchy clearly determining the order of privileged claims. Consequently, when several privileged creditors appear simultaneously within a single case, determining their precise ranking becomes difficult and occasionally impossible. A comparative reading of statutory provisions demonstrates that some privileged claims operate entirely outside the general five-tier hierarchy. Maritime privileges expressly take precedence over ship mortgages and other privileged rights recognized in separate statutes. The insurer's claim enjoys priority over any creditor with respect to the insured property, even against holders of formal legal instruments. Bank depositors' claims are granted priority over all obligations of the bank and over other privileged rights. Likewise, the seller's right in the insolvency of the buyer allows restitution of the sold asset, effectively removing it from the distribution pool altogether. These categories of claims collectively create what may be described as an extraordinary or supra-rank standing above the ordinary structure of privileged debts.

Alongside these exceptional claims, the general hierarchy traditionally includes workers' claims in the first rank, claims of legally incapacitated persons in the second, medical and pharmaceutical claims in the third, family rights such as maintenance and dowry in the fourth, and ordinary unsecured creditors in the fifth. Yet even this apparent structure is repeatedly disrupted by statutory exceptions. Tax debts occupy an intermediate position, enjoying priority over most creditors except workers and secured creditors. Claims of the Social Security Organization, although classified as privileged, are positioned below workers' claims and effectively appear at the lowest level among privileged debts.

Funeral and burial expenses occupy an exceptionally high position and may even prevail over secured rights. These divergences indicate that the legislator has not relied upon a single coherent criterion when determining priorities. Instead, social policy considerations, economic needs, and historical circumstances have influenced individual enactments independently, resulting in legal uncertainty and interpretive inconsistency. Although each rule may have been justified at the time of its adoption, the cumulative outcome today is a fragmented and occasionally inequitable system that challenges predictability and fairness in creditor relations.

In contrast, the Iraqi Civil Code of 1951 presents a comparatively more structured approach to privileged claims, though it is not free from difficulties. One of the principal strengths of the Iraqi system is the presence of a general conflict-resolution rule establishing that the ranking of privileges is determined by law and that any privilege lacking an expressly defined rank is placed below those whose rank is specified. Furthermore, privileges of equal rank are satisfied proportionally. This general principle significantly reduces uncertainty by offering courts a clear interpretive mechanism for resolving competing claims. Nevertheless, the existence of such a rule does not eliminate all complexity. Ambiguities remain, particularly regarding the position of public debts. The significant alteration of the ranking of governmental claims illustrates instability in legislative policy and demonstrates how legal structures may be influenced by broader political and economic developments. Adjustments apparently motivated by economic pressures and investment considerations have had lasting doctrinal consequences within the hierarchy of creditors.

A notable characteristic of Iraqi law is its broader emphasis on protecting vulnerable individuals through general privileges. The legislature has extended preferential status not only to workers' wages but also to debts incurred for essential living needs such as food, clothing, and medical care for the debtor and dependents. This approach reflects a social-justice orientation that integrates humanitarian considerations directly into property and creditor law. By recognizing basic subsistence obligations as privileged claims, the Iraqi system attempts to reconcile private law mechanisms with social welfare objectives.

From a comparative perspective, the Iraqi framework demonstrates several advantages over the Iranian system. The existence of a general rule governing conflicts between privileges, the clearer categorization of privileges, and the insistence on registration for immovable-property privileges collectively enhance legal certainty and predictability. These structural elements allow practitioners and courts to anticipate outcomes more reliably. However, the Iraqi system also faces significant challenges. The downgrading or suspension of tax claims reveals susceptibility to shifting governmental priorities, while the procedural complexity associated with maintaining and enforcing privileges can hinder practical effectiveness. Moreover, the absence of mechanisms for periodic adjustment of temporal limits or monetary thresholds in response to economic change risks rendering certain protections outdated over time.

The comparative analysis ultimately reveals that both legal systems confront a shared dilemma: balancing social protection with transactional security. Iranian law, characterized by dispersed legislation and the absence of systemic coordination, produces greater interpretive uncertainty but occasionally provides stronger substantive protection in specific areas such as family maintenance obligations. Iraqi law, benefiting from a more orderly legislative structure, offers greater coherence and foreseeability, yet remains vulnerable to policy fluctuations and structural rigidity. Both systems therefore illustrate the inherent tension between distributive justice and economic efficiency in the regulation of privileged claims. Effective reform in either jurisdiction would require the articulation of a unified normative foundation capable of harmonizing social considerations, creditor equality, and commercial certainty within a coherent hierarchy of priorities.

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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