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Arbitrary Divorce Stating Its Reasons and Compensation for It

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Abstract: This analytical study marked with arbitrary divorce to indicate its causes and compensation for it to know the most important reasons that lead to arbitrary divorce and analyze them theoretically in addition to knowing the mechanism of compensation for this divorce and what is its amount and according to the law adopted, we have talked in this study to three sections and it has been mentioned in the first section (the concept of arbitrary divorce) based on the general concept and to indicate the general mechanisms and formalities that are scientifically taken in the concept of arbitrary divorce. To two demands, the first is the definition of arbitrary divorce in language and terminology where we have compared the definitions in the law, language, terminology and statement of divorce in both, while in the second requirement to indicate the date of divorce throughout historical ages, while in the second section we have talked to (statement of the reasons for arbitrary divorce compensation for it) It was stated in the first requirement to indicate the reasons and in the second to compensate for arbitrary divorce according to the law and Islamic law, while in the third section we have talked to (conditions and effects) Arbitrary divorce) The first requirement stated the conditions of divorce and their fulfillment until the divorce is achieved, and in the second it clarifies the effects of divorce on both spouses and what are its consequences on them, from the psychological and physical side and the extent of the resulting impact after the divorce.

Keywords: Divorce, Causes, Effect, Compensation, Arbitrariness.

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INTRODUCTION

Although divorce is permissible in Islamic law and law as the prophet of Allah (peace be upon him) said (The more accepted thing that Allah hate is divorces), but he adhered to a number of rules and restrictions because of the negative effects it caused on women and children, which makes enmity and hatred between the parties and their families and this also reflects on society, as Islam has shown to be away from arbitrariness and injustice and set conditions for it and set limits for it, where granting this right to man is not full freedom when He wishes and even restricts him to a number of restrictions and foundations that must be available in order to achieve divorce in order to end the marital relationship that must be terminated, because of hatred, abuse, disharmony of the ten and other reasons that disturb the tranquility of marital life. Finally, who dragged me to write the research on this topic in order to clarify to both men and women their rights and duties and what they have.

In order to achieve the intended goal, we worked on studying the subject of the research an analytical study of the subject of arbitrary divorce and in accordance with the research plan of three sections we dealt in the first section on the concept of divorce and its history, in the second section the statement of the reasons for arbitrary divorce and the statement of compensation for it, and also in the third section we dealt with the conditions of arbitrary divorce and its effects.

Section One: The Concept of Arbitrary Divorce

Divorce is one of the most complex issues in our societies that has increased dangerously among most people under the age of thirty. The phenomenon has even become exacerbated for various reasons, perhaps the most prominent of which is the acceleration of parents. Mothers marry off their children at an early age and therefore both are not responsible for marriage. The parties should also not understand how to properly deal with each other without impulsivity. The time of a problem between them is reckless as the development of the dispute reaches divorce and other reasons that lead to divorce. And that's what we're going to learn about during this search for divorce, why it happens and how to address that problem which has become without tightness what leads to the loss of the family and the separation of children.

Divorce in Shariah

Lifting the restriction of the marriage between the spouses in special terms swearing to divorce: an oath that he will divorce his wife (1). Islam approved divorce if marital life reaches an impasse, divorce is legitimate for the utmost necessity and is not just for the sake of absurdity and fancy, it is abhorrent without needing it, which is the divorce of arbitrariness as classified by modern jurists, as they do not deny that the husband may abuse a right with the intention of harming the wife, and here the problem arises since although the jurists of Islam agree on the legality of divorce, they differed in the origin of this legitimacy between being in Its origin is permissibility or

urbanization. The audience of Maliki, Shafi'i and Hanbala jurists said that the origin of divorce is to be prohibited, and allowed only for a need, and this need varies relatively from one husband to another, it may be psychological, satisfactory or any other motive with which the husband cannot continue in marital life, which may not be declared among the people or presented before the eyes of judges, and therefore may not be rhythimized except with the permission of the judge to prevent its arbitrary use,

They are best known for saying: "Restricting divorce to the reason for which it is called", where Islamic law obliges cohabitation with husbands with goodness, and this is mentioned in the Holy Quran (2) and in the sayings of the Prophet (peace and blessings be upon him) (3), the duty of the husband who hates his wife to try to reform as indicated by that Holy Qur'an(4) We will show in this section in this section in the first requirement the definition of language and terminology and in the second requirement the date of divorce.

First Requirement: Definition of Arbitrary Divorce Language and Terminology

Divorce is a language, meaning the lifting of the absolute restriction, whether sensual or moral, so it is said that the prisoner divorced from his shackle and released him, as it is said that the woman divorced and divorced her, but the custom was to limit the use of the word divorce to the solution of the moral restriction, and the word divorce to the solution of the physical restriction(5), continued its meaning to lift the documents and leave absolutely, whether it was sensual as the constraint of the Persians or morally as the restriction of the nikah, which is the bond between the spouses and is taken from the divorce(6).

As for the legal terminology, the Iraqi legislator defined divorce in article (34/1) of the law of personal status in force as follows: Divorce lifts the marriage restriction by the rhythm of the husband or wife if entrusted or delegated or from the judge, and divorce does not occur except in the form assigned to him by law, and the legislator indicates from this text that he considered marriage a restriction, and that divorce is what raises this restriction.

As for divorce in Islamic law, the dissolution of the marriage contract between the spouses or the abandonment and dismissal, and divorce in the Qur'an mentions divorce in the Holy Qur'an in a number of verses (7) even if they decide to divorce (it does not harm its conditions).

Evidence of the Legality and Wisdom of Divorce

Divorce in Islamic law has been proven by the Qur'an and Sunnah.

First: Book

Allah the Almighty referred to divorce twice, so that he could grasp a favor or lay off with charity" (8). He also pointed out that divorce should be in the legal manner that I have shown you, which is divorce for several people. (9), It also lifted the wing, which is the sin of the divorced to their spouses, signifies legality, even if there is a sin, embarrassment, condition or restriction for the Almighty (10).

Second: (Al Sunah)

Divorce in the sanitized year is fixed by his action and words.

Actual Sunnah

Abu Dawood, al-Nisa'i (11) and Ibn Maja (12) narrated with their support that the Holy Prophet (peace and blessings of Allaah be upon him) "divorced his keeper and then reviewed it (13).

The Saying Sunah

There have been many hadiths that indicate the legality of divorce, including the hadith of Ibn Umar (14), narrated by the owners of books and Sunnah, about Nafi' ibn Umar.

Second Requirement: History of Divorce

Divorce introduced marriage, all previous nations knew divorce and established laws to regulate it. Many researchers consider that Hammurabi, the owner of the most famous laws in history, was the oldest legislator to enact regulations for divorce, where his sharia stipulated the right of the husband to divorce his wife in case of infirmity and non-procreation, and that the woman has the right to separate permanently from the husband in case of hatred after the judiciary decides on this.

As for the ancient Greeks, they also practiced divorce where it is considered the authority of the man and he signs it for any reason he sees and at any time he wishes, also the man can marry his divorcee to another person or recommend it to another person after his death, and the wife cannot divorce her husband if he is sterile, but the husband has the right to suit one of his relatives to contact his wife and cohabit with her to have children. In the Roman era, women had the right to divorce without restrictions and for no reason, and Julianus had violated King Constantine by limiting the freedom of divorce by giving it to both parties in line with the well-known Roman traditions and customs.

With regard to the divine religions, ancient Judaism gave a man the right to divorce his wife when he knew that she was misbehaving or when he wished to marry another woman, and Jews forbade the return of a divorced woman to her husband even if her second husband divorced her or died from her, and the woman had no right to request a divorce from her husband (15).

Section two: Reasons for Arbitrary Divorce to Compensate for it

First Requirement: Reasons for Arbitrary Divorce

- **Sexual incompetence:** The affected party can terminate the relationship if it is new in the event of an imbalance or damage in the sexual relationship after the certainty that there is no alternative. ⁽¹⁶⁾
- **Lack of awareness of married life:** One of the reasons leading to divorce is the insufficient awareness of the marital life between the parties and the rights and duties that underpin it ⁽¹⁷⁾.
- **Incompatibility between spouses:** Incompatibility between spouses may lead to divorce ⁽¹⁸⁾
- **Mental and health diseases:** One of the family problems is the psychological and health diseases that affect one of them often leads to the dissolution of the marital bond and they have no way out but to end this relationship ⁽¹⁹⁾. As for health diseases, such as one of them suffers from the chronic disease that one of the spouses suffers from and they do not find a medicine for him except to give sedatives and temporary grips. The disease may also include infertility and childlessness and thus the pre-planned marriage goals are absent and there is no stabilization of married life ⁽²⁰⁾.
- **Economic and cultural factors:** Economic factors have a strong impact on the marital relationship, the poverty of the husband may lead to a lack of trust and lack of confidence in the wife to secure their marital life and the inconsistency of the standard of living before marriage leadsthe parties to splitand move towards separation. Cultural factors include incompatibility in degrees and university degrees.

Second Requirement: Compensation for Arbitrary Divorce

In order for the wife to be entitled to compensation for arbitrary divorce, all the conditions specified in Article (39/3) must be met personal status after the judge refrains from arbitrarily causing the divorce and under limits that must be observed in accordance with the above article, which it is appropriate to mention its text to indicate the most important conditions contained therein, it stipulates that "If the husband divorces his wife and it turns out that the husband is arbitrary in her divorce and that the wife has suffered harm as a result, the court shall order her to divorce her divorcer." With compensation commensurate with his financial situation and the degree of his arbitrariness, Joomla is estimated not to exceed her maintenance for a period of two years in addition to her other inalienable rights.

The idea of compensation for divorce was not without reason and justification, but there is a group of people who advocate this idea and there are many opinions and ideas in which there has been

disagreement between them and in dividing them, and we will take the most important of these foundations and ideas and clarify them as follows:

Indemnification on the basis of contractual liability

Marriage is a consensual contract between a man and a woman that is legally resolved to him, and in which an offer and acceptance is required, it is one of the contracts that are based on consent and choice to ensure its survival and preservation, and marriage is a contract of the so-called contracts mentioned by the street and between its provisions, conditions and pillars, and determine the rights and duties necessary for it, also is considered a formal contract in the sense that it is only done by completing a certain formality with the necessity of the answer and acceptance thereof and the importance of this contract and the seriousness of the consequences thereof. Marriage is a contract of a special kind by the consensus of the jurists, as the noble street legislated this contract for lofty goals and many rulings, some of which are due to the couple as a solution of listening and the ten permanent ones, and some of which benefit society such as building a family and raising children, and some of which are due to the preservation of the human species, and the street has mentioned these goals in what Allah the Almighty mentioned in one of the holy verses.²¹

The Personal Status Law also sets out these objectives of the marriage contract in the text of Article (3) paragraph (1) in a definition of the marriage contract as follows: "A contract between a man and a woman to which the purpose of establishing a bond for common life and offspring is legitimately resolved", a definition transferred from the text of Article (1) of the Syrian Law of 1953, where this article defines marriage by the same definition, as the relationship between the parties to the marriage contract is not a material relationship or of other benefit, unlike what it is on the side of honor and affection. Respecting it, in the sense of this contract is more sacred than being a material contract, and the principle of sanctity came through the Qur'anic text (22), and since the marriage contract is a non-financial contract, there is no room to impose financial compensation in case of termination or termination based on contractual liability, because contractual liability is in addition to its cause, that is, the liability resulting from marriage is due to the marriage contract and contractual liability depends on the breach of what the nature of the contract requires,

That is, contractual liability is based on the existence of the contractual fault that resulted in damage with the requirement that there be a causal relationship between the fault and the damage.

If this criterion is objective in financial contracts, then in the marriage contract it is a personal and objective criterion at the same time, and if some jurists prepare the marriage contract as a netting

contract, it is limited to marital pleasure and dowry, and does not go beyond making it a basis for compensation for divorce, where Sanhoury says (the right is an interest of financial value protected by law). (23)

Indemnification on the Basis of Tort

Tort is achieved if a person fails to perform a duty imposed on him by law or law, and his default results in damage to the soul or money, so the defaulter bears the guarantee of what has been damaged, and when applying this principle to the provisions of marriage and its truth and wisdom divorce is not considered positive for compensation for divorce, no sane person can say that every failure or misunderstanding between the spouses leads to divorce in which the man is responsible for it and therefore he must compensate the wife and that is because he Shorten what was his duty through affection, housing and good ten, so that success or happiness in married life is not possible unless there are organized ways for the spouses, and vice versa every failure in the marital relationship each of them has a right to it, perfection is not achieved in the two there is no one perfect, and the jurists have mentioned the marital rights of each of the spouses and indicated that these rights must be equal and the lesson in them is the usual person, and the prevailing custom that So, but it may sometimes be urged that one of the parties asks for more or less than it deserves, this behavior may make the other party embarrassed and difficult, apparently from here he refrained from saying that compensation should be made because of one of the spouses towards the other party (24).

Compensation on The Basis of the Request of the Divorced or her Legal Representative

The application takes place either in the form of a counter-incident claim within the original suit or in a separate proceeding, If it does not request it in the original suit and the request for compensation from arbitrary divorce may be filed in the interlocutory case if the divorce judgment was issued against the wife in absentia, the court verifies the request of the objector to the judgment in absentia about the existence of arbitrariness or not, and the period of objection to the judgment in absentia may pass without the wife's objection to the divorce in absentia, it may file a claim for compensation independently where the wife's absence in the original suit may not be interpreted as acceptance of the divorce or that she If the wife or her legal representative waives her legal rights, including compensation, and the ruling is issued in favor of divorce between the two dilapidated persons, she may no longer claim it in an independent suit because she has forfeited her right to it and the fallen does not return, but if she reverses her waiver before the issuance of the judgment in the lawsuit, her waiver is not counted and she may seek compensation in an independent suit.

It is noted that the concept of the violator of the text of article 39/3 of the Personal Status Law is that if the wife or her agent does not seek compensation for arbitrary divorce, the court cannot rule on its own motion.

In this regard, we believe that the duration of the claim for compensation should be determined by a separate proceeding, such as one year starting from the day after the wife becomes aware of or informs her of the divorce ruling. During which a claim for compensation is filed against the wife not being harmed by divorce. (25)

CONCLUSION

The formula of marriage and its system in Islam and the law has simplified the street its command and occurrence, as it is considered that the original has satisfaction between the spouses, and must be corrected in front of witnesses with no objection to its completion. As for divorce, we note the street stressed in it and its narrowness of limits and there are conditions if it is not taken into account that the divorce did not occur in the first place, and the most important of which is that the divorced person is a rational adult who is not obliged to coerce, where it is not correct to divorce the madman, the boy, the anger and the drunkenness, whether signed by the husband or From his agent, knowing that Iraqi law did not take the proxy in the divorce, and therefore it is necessary to determine whether the occurrence of the divorce is arbitrary or habitual and if it is proved before the courts of arbitrariness, the husband must compensate for the arbitrariness based on the idea of abuse of the right issued by the husband towards his wife (divorced) and has been stipulated in Article (39/3) of the Iraqi Personal Status Law, and the court may decide on the assessment of compensation if she suffers harm from her husband at her request after the divorce occurs It is noted that the person who is abusive in divorce if it occurs without reason or without consent and also that the compensation does not exceed two years and this does not prevent from the other rights of the wife, and the assessment is either through the court or the use of experts, and it seems that the wife deserves compensation even if her husband reviews it during the period of preparation and the divorce was retroactive because the damage is achieved and does not go away by reversing it, and that the pleasure of divorce is not considered compensation for arbitrary divorce, because it is obligatory For every divorced woman, whether she is the cause of divorce or has nothing to do with it, and considering that most personal status laws do not consider it compensation but stipulate that it is a right honored by Islam, and the best way to lift the damage caused by divorce is to pay money under the name of compensation for pleasure as determined by Islamic law, and under the name of compensation for arbitrary divorce as approved by law.

Results

- Divorce is permitted within the framework of legal controls of extreme necessity and urgent exceptional circumstances that make divorce a solution and a remedy for the escape of an inevitable burden that extends to all family members.
- The positive law did not stand idly by in determining compensation for damage caused by arbitrary divorce, but the judiciary issued rulings to it and applied them in accordance with the regulations of the law.
- If it is low, then the court cannot degrade them with compensation and this is according to the husband's ability, so what is the fate of the divorced woman?

Recommendations

- This subject itself needs to be considered and modified by those who have the responsibility to all specialists in this regard, since the whole life is in a novelty and develops.
- Reducing the phenomenon of divorce requires great care, work and effort at all social, media and psychological levels, and there must be a plan adopted in this regard to reduce the increase of this phenomenon.
- We call on the Iraqi legislator to regulate cases of arbitrary divorce and amend its provisions, by establishing the necessary rules as inevitable, and in this we have guaranteed care and fairness for women.

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