

# Financial Rights of Divorced Woman after conjugal meeting and Before Marriage- Jurisprudential Comparative Study in the Iraqi civil Law

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## ABSTRACT:

This research aims to explain the financial rights of the divorced woman after al- conjugal meeting before entering into Islamic jurisprudence schools, with a comparison with the Iraqi Personal Status Law. This research included four topics:

The first topic: includes the right of the divorced woman after conjugal meeting before entering into the dowry, and it included an explanation of the meaning of conjugal meeting, its categories and conditions, the meaning of entry (intercourse), and the right of the divorced after being alone before entering both the named dowry and the dowry of the same.

The second topic: involves the right of the divorced woman after being alone before entering into the pleasure of divorce, and it included an explanation of the meaning of the pleasure of divorce, its amount, its ruling, and the entitlement of the divorced woman after being alone together before entering "intercourse" into her.

The third topic: includes the right of a divorced woman after being alone before entering into the waiting period. It included the ruling on waiting for a divorced woman after being alone before entering, and her entitlement to the waiting period.

The fourth topic: is concerned with the right of the divorced woman after being alone together before entering into inheritance. It included an explanation of the effect of divorce on the inheritance between spouses, and the legacy of the divorced woman after being alone together before entering into the disease causing death.

## Keywords:

Financial, rights, Divorced, Woman, Conjugal, Marriage, Jurisprudential, Iraqi, Civil Law.

## INTRODUCTION

Among the matters in which the jurists differed greatly is the establishment of seclusion with the wife, the place of consummation with her, as there was a difference between them in terms of seclusion, and in many rulings, does seclusion come under the rule of consummation or not? Given the abundance of these rulings, and the complexity of the disagreement in them, I thought that I narrowed this research to explaining an important aspect of them, which are the financial rights of a divorced woman after being alone together before consummation.

### The Nature of Research:

The research is a lawful and jurisprudential study comparing the financial rights of a divorced woman after being alone before consummation, known as divorce after seclusion before consummation, with an explanation and following the doctrines of the jurists therein, in order to arrive at the most correct doctrine in clarifying these rights, then mentioning the ruling of the Iraqi Personal Status Law with reference to the views of some Arabs laws.

The importance of the topic and the reasons that led me to choose this topic:

The importance of this topic lies in the following points:

1. Explaining the aspect in terms of the financial rights

of a divorced woman after being alone before consummation.

2. Eliminate the ignorance that exists in the culture of the people, which requires that it is possible to avoid the Sharia in a way that could be harmful to others.

3. A statement of the inadmissibility of violating the intention of the public in order to achieve the intention of the intended individual.

4. Demonstrating Islam's interest to restore rights to its people in every possible way.

5. That the financial rights of a divorced woman after being alone together before consummation, there was a great difference between the jurists in many aspects, and some of them did not stipulate the ruling on it according to some schools of thought which calls for a statement with them based on the judgments they decided.

6. Some of these rights were not stipulated in the Iraqi Personal Status Law, which requires clarification of the law's position on them based on the articles that indicate what the jurisprudential schools of thought should be implemented when no provision is made for the ruling in the law.

7. The importance of this topic lies in the legal and lawful field.

### The Research Outline:

The research includes:

The first topic: the rights of the divorced woman after being alone together before entering into the dowry, and this topic included demands to clarify the meaning of **conjugal meeting**, its divisions and conditions, the meaning of entry, and the right of the divorced after being alone together before entering both the named dowry and the equal dowry.

The second topic: the right of the divorced woman after being alone together before entering into the pleasure of divorce, and this topic included the meaning of the pleasure of divorce, its amount, its ruling, and the entitlement of the divorced after being alone before entering her.

The third topic: the right of a divorced woman after being alone before entering into the waiting period. This topic included demands in which the ruling on the waiting period for a divorced woman after being alone before consummation, and her entitlement to the waiting period.

The fourth topic: the right of the divorced woman after being alone together before entering into inheritance. This topic included demands in which to explain the effect of divorce on the inheritance between spouses, and the inheritance of the divorced after being alone together before entering into the disease of death.

Conclusion: in which I mentioned the most important findings of the researcher.

Finally, the research includes a list of sources and references

### **Research Methodology:**

In this research, the researcher follows the inductive descriptive approach, whereby the doctrines of the old jurists regarding the financial rights of the divorced woman after being alone before entering are explained and followed, and then an examination of what is present among contemporary jurists until the combination of authenticity and contemporary, and then access to the most correct doctrines in it. Then I mention the opinion of the Iraqi Personal Status Law with mentioning some laws close to the Iraqi law, and this is done as follows:

1. Explaining and following the doctrines of the jurists regarding the financial rights of a divorced woman after being alone before entering from the original ancient and modern sources, and studying these doctrines in order to clearly identify these doctrines from which one can arrive at the right mentioned in them.
2. Addressing the disagreement between the jurists by returning the jurisprudential schools of thought to their owners, and the percentage of what is studied by their compilers from the compilers of the doctrines books.
3. Editing the place of disagreement in the different branches therein, and discussing this disagreement following the evidence for each doctrine, then clarifying the point of disagreement and then discussing the evidence in order to reach the most correct doctrine that

the evidence favors and is consistent with the purposes of the true Sharia.

4-Then attributing the Qur'anic verses to their places from the Book of God, the Mighty, the Wise, and the attribution of the hadiths of the Prophet to their places from books of Sunah and hadiths, and judging what was mentioned in the non-Sahihin of the hadiths of the Prophet.

### **The first topic**

#### **The Right of a divorced woman after being alone together before entering the dowry.**

Introduction:

In terms of speaking about the right of a divorced woman after being alone before entering into the dowry, it is necessary to mention the meaning of seclusion and the dowry. The first is a statement of the meaning of solitude, the second requirement is a statement of the dowry, and the third requirement is an explanation of the right of a divorced woman after being alone with him before entering into the named dowry, and the fourth requirement is an explanation of the right of a divorced woman after being alone together before entering into a similar dowry:

The first requirement: a statement of the meaning of seclusion and what is meant to enter.

As a prelude to the right of a divorced woman after being alone, before entering into the so-called dowry, the following matters will be mentioned:

First: Explaining the meaning of solitude in language and convention:

As for solitude: in the language: the noun of the source of solitude, vacancy, and khulwah. It is said: empty the place, the vessel, and others, empty, and empty: if it is empty of what it is. So-and-so is alone with his owner, free, and alone, and emptiness: that is, he is alone with him in solitude. Ibn Faris said: ((Kha, the lam, and the ill-fated letter: a single original indicating the nakedness of a thing from a thing.<sup>(i)</sup>

And privacy in the terminology of the jurists: It is that the spouses - the man and the woman - meet after the valid marriage contract in a place where they are safe from people seeing them, as a garden, an office, a home, the door is closed, and none of the spouses has an obstacle preventing intercourse like a menstruating woman.<sup>(ii)</sup>

Second: What is meant to enter is intercourse, and the release of entry into intercourse as a metaphor.<sup>(iii)</sup>

The second requirement: the dowry:

Dowry idiomatically: It is the name of money that a woman deserves over a man through the marriage contract, or intercourse.<sup>(iv)</sup>

The dowry is one of the rights of the woman over her husband, and it is one of the provisions of the marriage contract, and one of its effects.

The dowry was legislated<sup>(v)</sup> as a necessary gift, a determined gift, and not in lieu of or in place of. The Almighty said :That is give them their dowries as an

obligatory gift, and they please a soul by pushing it, just as you please a soul with a gift. <sup>(vi)</sup>

Imam Al-Mawardi said in his interpretation: ((As for the nehlah: it is the gift without substitution)). Imam Al-Qurtubi said: ((The dowry is a gift from God Almighty for a woman)). And Imam Ibn Qudamah said <sup>(vii)</sup>: ((It was said: The nahlah: the gift, and the dowry in its meaning, because each of the spouses enjoys its companion, and he has made the dowry for the woman, so it is as a gift without compensation)). <sup>(viii)</sup> and also Almighty said: If any of you have not the means wherewith to wed free believing women, they may wed believing girls from among those whom your right hands possess... <sup>(ix)</sup> and it is not allowed to marry without a dowry. <sup>(x)</sup> It is not conditioned to be mentioned in the contract for his Almighty saying: ((There is no blame on you if ye divorce women before consummation or the fixation of their dower)). <sup>(xi)</sup>

This indicates that the dowry was prescribed to be a necessary gift from the husband to his wife. <sup>(xii)</sup> Almighty Allah says: And give the women (on marriage) their dower as a free gift. <sup>(xiii)</sup>. So it means give their dowry as a pleasant gift. <sup>xiv</sup>

Imam Al-Mawardi said in his interpretation: ((As for the nehlah: it is the gift without substitution)) <sup>(xv)</sup>. Imam Al-Qurtubi said: ((The dowry is a gift from God Almighty for a woman)) <sup>(xvi)</sup>. And Imam Ibn Qudamah said: ((It was said: The nahlah: the gift, and the dowry in its meaning, because each of the spouses enjoys its companion, and he has made the dowry for the woman, so it is as a gift without compensation)) <sup>(xvii)</sup>.

Demonstrating the danger of contracting marriage, drawing closer to the heart, guiding affection, and a kind of righteousness and helping a woman prepare herself, and it is a symbol of honoring women and raising their value in Islam, and it shows the man's sincere desire to have intercourse with the woman and build a decent marital life with her <sup>(xviii)</sup>; Therefore, Ali bin Abi Talib, was prevented from entering into his wife, Fatima, may God be pleased with her, until he gave her some of the dowry. <sup>(xix)</sup>

It is not intended as a replacement dowry. Because what is meant by marriage is accommodation and duplication, and placing the woman in a position with those who will ensure her, protect her, and improve her relationship <sup>(xx)</sup>. Al-Nawawi said in Al-Rawdah: (The companions said: The dowry is not a pillar in marriage, unlike what is sold and the price in selling, because the greater purpose of it is enjoyment and its consequences, and it is based on the spouses, so they are the pillar) <sup>(xxi)</sup>. Imam Kamal al-Din Ibn al-Hamam said: ((It is - that is, the dowry - it was prescribed to demonstrate the honor of the marriage contract, as an alternative was not prescribed, such as the price and the fee, otherwise the name must be presented. <sup>(xxii)</sup>

And it was said: The dowry: it is in lieu of the part, or the pleasure <sup>(xxiii)</sup>. Almighty Alah says: Ibn Katheer said: (The dowry is in meeting the few, and that is why the Almighty said): And how could ye take it when ye have gone in unto each other, and they have Taken from you a solemn covenant? <sup>xxiv)(xxv)</sup>

The dowry is permissible for all that is permissible as a price in selling, or a fee in wage. <sup>(xxvi)</sup> The dowry in the language has several names: the dowry, the dowry, the alms, the obligatory, the wage, the height, the relationships, the estates ...etc. <sup>(xxvii)</sup>

The dowry is of three types: they are: the named dowry, the dowry of the same, and the dowry.

The named dowry: It is what was called in the correct contract or after it by mutual consent, that it was explicitly agreed upon in the contract, or imposed by the wife after it by mutual consent, or imposed by the ruler. <sup>(xxviii)</sup>

The dowry of the same: it is the amount desired by the same dowry <sup>(xxix)</sup>. It is considered. It was said: It is considered that it is related to her relatives of women and others who are relatives of her <sup>(xxx)</sup>. And it was said: It is considered especially related by groups of women <sup>(xxxi)</sup>. And it was said: It is considered the conditions of a woman in her position, youth, beauty, honor, and money, from those who are similar to her from her clan and neighbors, whether from her clan or not from her clan <sup>(xxxii)</sup>. The dowry of the same is required in every valid marriage without naming it at all, or naming it that is unknown, or what is not legally permissible. The same applies to every corrupt marriage after intercourse. <sup>(xxxiii)</sup>

Mut'a: the pleasure" is the money that a husband gives to his divorced woman in addition to, or instead of, the dowry to please herself, and to compensate for the pain of separation <sup>(xxxiv)</sup>. And this is known as the pleasure of divorce <sup>(xxxv)</sup>. And pleasure is for divorced women before entering into a marriage in which there is no naming <sup>(xxxvi)</sup>. And it was said: It is obligatory for every divorced woman <sup>(xxxvii)</sup>. And it was said: It is for every absolute woman, but it is not obligatory. It is considered in the case of the man, as in alimony. And the highest of the dowry: servant and clothing: it is: a shield, a veil, and a scarf <sup>(xxxviii)</sup>.

And it was said: It is due in its decision to the ruler <sup>(xxxix)</sup>, because he did not return the Sharia with his decision, and it is something that needs diligence, so it must be referred to the ruler. <sup>(xl)</sup>

First: that the wife owns the dowry called the right contract, because it is a contract in which he owns the compensation, so she owns the full compensation, such as selling, except that the woman's ownership of the dowry called the right contract is unstable, meaning that

it is subject to all or part of the forfeiture, if there is a reason for that. <sup>(xli)</sup>

Second: The basic principle is that the wife owns named the dowry as soon as the right contract is valid, whether or not it is postponed, because the marriage contract is a contract in which the husband owns the compensation. So the wife owns the full compensation, like selling. <sup>(xlii)</sup> But this contract is liable to fall wholly or in part as long as there is no confirmation and determination of the dowry.

Third: The jurists have agreed that whoever divorces his wife before consummating with her and has given her a dowry, he must have half of the dowry named.

Almighty Allah says: <sup>(xliii)</sup> And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (Is due to them), unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness. And do not forget Liberality between yourselves. For Allah sees well all that ye do.

And it is an explicit declaration that out to be followed. <sup>(xliv)</sup>

Fourth: The jurists have agreed that if one of the spouses dies, before entering into a marriage in which the name of a dowry is called, that he confirms the name. Whether the woman is free or slave; because the dowry was obligatory in the contract. The contract was not broken by death, but it ended because it is a contract for the age; It ends at the end of life. And if it ends, it is confirmed in the past and is established as the status of fasting, then it is decided that the night will come, and the duty is decided and because all of the dowry was due to the same contract, then it became a debt owed by it - and death was not known as the extinction of the debt according to the principles of Sharia - so none of it is forfeited by death like all other debts. <sup>(xlv)</sup>

Fifthly: The scholars have agreed that the dowry must be all due to intercourse, or with the death of one of the spouses <sup>(xlvi)</sup>.

The third requirement: the effect of being alone before entering into the dowry.

The jurists differed as to whether a divorced wife breaks after the marriage contract, then divorces her before consummation, so is the dowry obligatory in full with this seclusion, or is only half of it required?

The first saying: The authors of this saying went to the obligation of the dowry completely by being alone, and it is narrated from the four caliphs and a group of the Companions, Zaid bin Thabit, Abdullah bin Omar, Abu Darda ', al-Mughira bin Shu'bah, Muath bin Jabal, and Abu Musa al-Ash'ari <sup>(xlvii)</sup> and by this he said of the followers: Ali bin Al-Hussein, Saeed bin Al-Musayyib, Suleiman bin Yassar, Urwa, Ataa, Al-Layth, Al-Awza'i,

Al-Zuhri, Al-Thawri and Ishaq. <sup>(xlviii)</sup> This is the saying of Imam Abi Hanifa, <sup>(xlix)</sup> and one of the two sayings of Imam al-Shafi'i, <sup>(l)</sup> and the saying of Imam Ahmad <sup>(li)</sup>. And upon him the fatwa of most of the scholars. <sup>(lii)</sup>

The second view: Half of the dowry is required to be alone after the contract and before consummation. This was narrated on the authority of Ibn Abbas and Ibn Masoud. And on it, Tawoos, Ibn Sirin, Shurayh, Al-Shaabi, and Abu Thawr said <sup>(liii)</sup>. This is the saying of Imam Malik <sup>(liv)</sup>, and Imam Shafi'i in his new doctrine <sup>(lv)</sup>, and a narration on the authority of Imam Ahmad <sup>(lvi)</sup>, and the saying of the people of al-Zahir. <sup>(lvii)</sup>

As for the reason for the differences of opinion among the jurists on the issue: Ibn Rushd al-Maliki - may God have mercy on him - indicated the reason for their disagreement on this issue, so he said: (The reason for their disagreement on that is the opposition of the Companions <sup>(lviii)</sup> ruling on that to the apparent meaning of the book. Then he mentioned the text of the book in that, then he said: (This clearly obligated the dowry only by touching "intercourse", and "intercourse" here appears from his command that it is intercourse, and it may be attributed to its origin in the language, which is touching, and perhaps this is what the Companions interpreted. For his Almighty saying: Also (prohibited are) women already married, except those whom your right hands possess: Thus hath Allah ordained (Prohibitions) against you: Except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property,- desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise. <sup>(lix)</sup>).

Evidence and its discussion: Evidence of the owners of the first opinion: Those who said that the dowry is required in full by correct solitude inferred the following:

((If you desire to replace a wife with another and you have given the former 'even' a stack of gold 'as a dowry', do not take any of it back. Would you 'still' take it unjustly and very sinfully?))

And how could you take it back after having enjoyed each other intimately and she has taken from you a firm commitment? <sup>(lx)</sup> I answer it: Most of the commentators state that what is meant by explication in the verse is intercourse, and that is narrated on the authority of Ibn Abbas, Ibn Masoud, Mujahid, Al-Sadi, and others <sup>(lxi)</sup>.

2- On the authority of Zaid bin Ka'ab, he said: ((The Messenger of God married a woman from Bani Ghafar, <sup>(lxii)</sup> and when he entered , he saw with her rib <sup>(lxiii)</sup>, so he said: Put your clothes on you, join your family, and order her dowry. <sup>(lxiv)</sup>

I answer him in two ways: The first: This is a weak



hadeeth that is false<sup>(lxv)</sup>.

The second aspect: that - if it is true - there would be no evidence in it because the prophet prayers and peace on him did not say to him that she has an obligation, rather it is a preference from him, and as if she preferred and waived all her right from him, she would have done well. Almighty Allah says: 237 baqarah.<sup>(lxvi)</sup> And if she would neglect her right that would be an advantageous for her.<sup>(lxvii)</sup>

3-On the authority of Muhammad bin Abd al-Rahman bin Thawban - may God be pleased with him - he said: The Messenger of God said ((Whoever uncovers a woman's veil and looks at her, then the dowry is required, he enters with her or not<sup>(lxviii)</sup>

I answer him: that it is carried as a means of intercourse by exposing the khimar.<sup>(lxix)</sup>

4- On the authority of Zarara bin Abi Ufa - may God be pleased with him - he said: ((The Rightly Guided Caliphs of the Mahdis: Whoever closes a door or relaxes a cover, then the dowry is required, and the waiting period is obligatory))<sup>(lxx)</sup>. He reported that it was the judgment of the Rightly Guided Caliphs, and it was narrated on the authority of the Prophet that he said: ((You must have my Sunnah and the Sunnah of the Rightly Guided Caliphs, the Mahdis after me, hold on to it and bite against it.<sup>(lxxi)</sup>

5-Companions 'unanimity that the dowry must be complete in seclusion.<sup>(lxxii)</sup>

I answer him: that it is not unanimous, with the contradiction of Ibn Masoud and Ibn Abbas.

In response, that is not true for them. Ibn al-Mundhir said: (It was narrated on the authority of Ibn Masoud and Ibn Abbas that they said that - meaning that she has half of the dowry in solitude - and this is not correct on the authority of either of them.<sup>(lxxiii)</sup> The marriage contract is a contract of benefits, so the dowry is settled through vacancy, such as hiring.

6- That marriage is a contract of benefits, so the dowry is settled through vacancy, such as hiring<sup>(lxxiv)</sup>.

I answer this: that in leasing, being able to use has been established in place of the collection of utility. In order to pay the damages for the remuneration; because the lease is for a known term. There is no harm to her in marriage. Because the husband either fulfills or divorces, and if he fulfills her right, her right is assured, and if he divorces, half of the dowry will be lost on her, but a return is better for her because the contracted person returns to her in order with the integrity of half of the dowry<sup>(lxxv)</sup>.

7- The due delivery was found on her part, so she must have an allowance, such as selling<sup>(lxxvi)</sup>. That the one who is entitled to it is surrender, and the occurrence of intercourse is on the part of the husband, so his abstention from it does not prevent the validity of entitlement to the dowry<sup>(lxxvii)</sup>.

When it was proven for the husband to return half of the dowry by divorce before touched, he indicated that he will not return to it with any of it after the touch. And touching: sexual intercourse.

Evidence and discussion - the evidence for the second opinion - which says that half of the dowry is required by being alone. Those who said inferred that the dowry is not obligatory completely by proper solitude, rather it must be described as follows:

1- Allah saying: ( ).<sup>(lxxviii)</sup>

I answer this: What is meant by touching is the khulwah, the object of the cause is the cause, which is the khilwa.<sup>(lxxix)</sup>

Allah's saying: Also (prohibited are) women already married, except those whom your right hands possess: Thus hath Allah ordained (Prohibitions) against you: Except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property, - desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise.

2-<sup>(lxxx)</sup>. Spreading: intercourse<sup>(lxxxi)</sup> that was narrated on the authority of Ibn Abbas and Ibn Masoud.<sup>(lxxxii)</sup>

I answer this: that the disclosure is taken from space, which is the empty<sup>(lxxxiii)</sup>, as if he said: Some of you have been empty to others except that is used for intercourse; because it is in privacy. And it was narrated on the authority of al-Fura that he said: Al-Dafaa: being alone with it, whether or not he entered<sup>(lxxxiv)</sup> "touched" her.

3- On the authority of Ibn Masoud that he said: ((She has half the dowry even if he sits in front of her feet.<sup>(lxxxv)</sup>

I answer him: that he is disconnected. Al-Bayhaqi said: ((And there is a break between Al-Shaabi and Ibn Masoud.<sup>(lxxxvi)</sup>

4- On the authority of Ibn Abbas that he said about a man who marries a woman without her and does not touch her and then divorces her: ((She only has half of the dowry.<sup>(lxxxvii)</sup>

I answer this in two ways:

The first aspect: it is not valid. Because it was narrated by Laith bin Abi Salim, and he is weak. Ahmad said: ((It was narrated by Laith, not a verified hadith.

The second aspect: that Hanzalah narrated on the authority of Ibn Abbas, in contrast to what was narrated by Laith, and Hanzalah is stronger than Laith.<sup>(lxxxviii)</sup>

5. On the authority of Ibn Wahab in the blog on the authority of Yazid bin Abi Habib: ("Shrih al-Kindi spent a woman with whom he built her husband, then he became divorced, and she said: He did not touch me, and he said: I did not touch her. And he commanded her to observe her waiting period from him))<sup>(lxxxix)</sup>.

6. She was divorced before the politician, so she did not have the full dowry, like someone who did not violate her<sup>(xc)</sup>.

7. If solitude was like the injury in the stability of the dowry and the necessity of the waiting period, it would have been like the injury in the necessity of the dowry of the same in the suspicion<sup>(xci)</sup>.

### Weighting/ Equivalence

After reviewing the sayings of the jurists and their evidence, it becomes clear that the scholars are agreed that the dowry is all obligatory by intercourse, and they also agree that the dowry must be all through intercourse. The noble verse, but they differ as to what is meant by intercourse: is it intercourse, or seclusion, which seems to me in this issue: it is the decision of the full dowry for the wife to be alone, if this seclusion is accompanied by a permissibility of it that is not permissible for others, by having intercourse, kissing, or touching her with lust, or he looked at something that only the husband could see, such as a vagina; She deserves the full dowry, because the basic principle is that being alone with the dowry necessitated the dowry because it specifies intercourse, and for this it was a condition that they would not be discerning with them. Intercourse: the pleasure and enjoyment, and the permissibility of her vagina, so she deserves the dowry with it. Likewise, being alone with pleasure and enjoyment with intercourse or without it.

And God, may He be glorified, may He be exalted, commented in a place in the Qur'an the merit of the dowry by enjoyment, so he said: (Also 'forbidden are' married women—except 'female' captives in your possession. This is Allah's commandment to you. Lawful to you are all beyond these—as long as you seek them with your wealth in a legal marriage, not in fornication. Give those you have consummated marriage with their due dowries. It is permissible to be mutually gracious regarding the set dowry. Surely Allah is All-Knowing, All-Wise).<sup>xcii</sup> This weighting is supported by what was mentioned in the interesting explanation, he said: ((And it was a narration was mentioned on the authority of Imam Ahmad, which should be a rule. He said: "Because it is permissible from it that which is not permissible for others." That is why they said: If he touches her with desire, or looks at something that only the husband looks at like a vagina, then she deserves the dowry in full, because it is permissible from it that which is not permissible. He said: This narration is the doctrine, which is that if the husband permits his wife what is not permissible for others, such as intercourse, being alone, <sup>xciii</sup>touching, kissing, or looking at what he does not look at, such as the private part, then the dowry is decided in full.<sup>xciv</sup>

This weighting is the apparent meaning of the Qur'an, and it is what the companions' sayings are interpreted<sup>xcv</sup> in determining the dowry in full privacy, as indicated

by Ibn Rushd, who said - after mentioning the texts of the book on the touch -: And the touching here appears from his matter that it is intercourse, and it may bear on its origin in the language, which is touch, and perhaps this is what the Companions interpreted. And the conclusion: The dowry is decided completely by seclusion if its owner is enjoying it and is permissible from it that which is not permissible for others, and it can be carried. It is the first saying that requires the full dowry in seclusion. As for seclusion without that: only half of the dowry is required, and accordingly the second saying can be attributed to him: The one who is obligated is half of the dowry to be alone<sup>xcvi</sup>, and God Almighty knows the right.

If the spouses differ in the occurrence of intercourse or enjoyment, then what is considered is the wife's saying. Malik, may God have mercy on him, stated it, and this is the saying of Zaid bin Thabit.<sup>xcvii</sup> Therefore, the full dowry is decided upon the husband for the wife - after being alone - if they agree on the occurrence of intercourse or the occurrence of enjoyment without intercourse, and in the event of their disagreement, and the woman claims that it has occurred. But in the event that they agree not to have intercourse and enjoyment, or they differ, and the woman claims that it does not fall, then only half of the dowry is required, and God Almighty knows best.

### The View of the Iraqi Personal Status Law:

Where the twenty-first article stipulates: [The wife is entitled to all the dowry called entry or the death of one of the spouses, and she is entitled to half of the dowry called divorce before consummation. And confirms the necessity of the dowry for the wife in the following cases:..<sup>xcviii</sup>

First: If one of the spouses dies after the valid contract and before the legally considered consummation.

Second: Entry "consummation" is two real types of intercourse, and my judgment is correct seclusion, and the previous article did not mention the correct seclusion, but work was carried out in the Iraqi judiciary to adopt the Hanafi doctrine in the issue of a woman's entitlement to all the dowry if her husband divorced her before consummation and after the correct seclusion, as stated in the Court of Cassation Decision No. (445) And dated 10/4/1962.

### The fourth requirement: The right of a divorced woman to a dowry after being alone before consummation:

#### Introduction:

The jurists fuqaha 'used to designate a delegate who was not named for a dowry in the contract, and the mandate is divided into two parts:

a. Delegating the dowry: which is to marry her as she wants, or whatever the husband or the guardian wants, or whatever others want, and the owners do not call this type authorization, but rather they call it arbitration.

B. The authorization of marriage, which is that the father marries his forced daughter without a dowry, or the woman permits her guardian to marry her without dowry.<sup>xcix</sup>

### Entitlement of the wife of the dowry:

First: There is no disagreement among the jurists that if the wife is divorced after consummation, she is entitled to a full dowry, whether she is the permissible of a few or the permissible of the dowry. They also agreed that if he divorced her before entering, she would have nothing but pleasure, because God Almighty said: disagreement between them in Obligatory.


((And if you divorce them before consummating the marriage but after deciding on a dowry, pay half of the dowry, unless the wife graciously waives it or the husband graciously pays in full. Graciousness is closer to righteousness. And do not forget kindness among yourselves. Surely Allah is All-Seeing of what you do)).<sup>(c)</sup> There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

Second: The jurists fuqaha 'differed regarding the entitlement of the divorced female after being alone together before entering the same dowry, according to four sayings:

The first saying: that the delegate without differentiating between the two types of delegation, if she divorced after the correct seclusion, she must have the same dowry in full, so correct solitude takes with them the rule of entry, but if the delegate divorces after the corrupt retreat before entering, then she is not required to have any of the dowry, but only pleasure is required for her. They justified that by saying that the pleasure replaces half of the proverbial dowry, which is the Hanafi school of thought.<sup>(ci)</sup>

The second saying: If the wife was divorced before consummation, she does not have any of the dowry, but rather her pleasure, and they did not differentiate between the one with whom he was alone, and the one with which he was not disturbed, and the wording before consummation is valid for both of them, so on this divorced woman after being alone before consummation she does not have any of the dowry . This is the view of the Malikis, and this confirms that the Maliki doctrine does not take the rule of consummation, which is the Maliki doctrine.<sup>(cii)</sup>

The third saying: it is to differentiate between the permissible of the dowry and the woman of the dowry:

if the permissible of the dowry was divorced before entering consummating her, half of the dowry was equal. Almighty Alah says: <sup>(ciii)</sup> And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (Is due to them), unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness. And do not forget Liberality between yourselves. For Allah sees well all that ye do. 

This indicates that if it is not imposed, then half is not obligatory, and there is no differentiation between the one with whom he was alone, and the one with which he was not disturbed, and the wording before entering is valid for both of them, and that khulwah does not take the rule of entering into the dependent according to the Shafi'i, then the divorced woman has to be divorced after being alone before entering if she is the authorized dowry She has half the dowry of the same, and if she is delegated to a few, then she does not have anything from the dowry, which is the Shafi'i school of thought.<sup>(civ)</sup>

The fourth saying: It is argued that the divorced woman after being alone before entering is entitled to a dowry in full if she fulfills the conditions of seclusion with which the dowry is determined. The half dowry of the proverbial doctrine; Because this woman has a dowry that is obligatory before the divorce, so he must do justice as if he called it, or because she did not accept without a dowry, so the pleasure was not required as it is called for. She has none of the dowry; Because her contract lacked a correct designation, so she looked like a woman who was not assigned anything to her .<sup>(cv)</sup>

As for the delegate of the few, she is not required to have any of the dowry according to the correct view of the doctrine, because the wife was satisfied without compensation, and her part was returned to her intact, and giving half of the dowry was not due to her. Because God Almighty enjoins her pleasure, so in the obligation of half of the dowry he combined them together, or waived the prescribed pleasure, and both of them are corrupt,<sup>(cvi)</sup> and in another narration on the authority of Imam Ahmad, may God have mercy on him, she must have half of the dowry similar because it is a valid marriage that requires the dowry of the same after consummation, then half of it is required in divorce before consummation, as if it was called forbidden.<sup>(cvii)</sup>

Decision: After reviewing the sayings of the jurists and their evidence, it became clear to me that whoever required the divorced woman after being in a correct or fulfilling seclusion with conditions the dowry was decided before entering the full dowry, based on its origin that this seclusion takes the rule of entry, and entry decides the full dowry, and based on what I prefer

In the previous requirement that seclusion does not take the rule of entry; I am not likely to deserve the perfect dowry.

It is also likely that she is not entitled to half of the proverbial dowry; For God Almighty says:<sup>(cviii)</sup>There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

Where the verse commanded to give pleasure to the one who did not name her dowry if she was divorced before the dowry was entering, and this includes those being alone with her (Islamic solitude), and those who did not disturb her, and the verse did not give her something of the dowry, and God Almighty knows best.

The position of the Iraqi Personal Status Law: Article twenty-one of the Iraqi Personal Status Law stipulates that: [The wife is entitled to all the dowry called entry or the death of one of the spouses, and she is entitled to half of the dowry called divorce before entry], and the twenty-second article states: [If the division falls after entering into an invalid contract. If the dowry is named, then the lesser dowry is required than the one named]. So the wife deserves half of the dowry in the following cases, including that the division between the spouses takes place before consummation, there is no dispute between the jurists that divorce before entry is fair to the dowry if the dowry is named, but if there is no named dowry and the divorce took place before entry, then the divorced woman deserves pleasure which is equivalent to a dress For those like her, and that judge estimates that no more than half of the dowry of the same.<sup>cix</sup>

### **The second topic: the right of a divorced woman after being alone together before entering into the pleasure of divorce**

**Introduction: This topic includes the following:**

- 1-Defining the pleasure of divorce.
2. Ruling on the pleasure of divorce.
3. The amount of pleasure of divorce.
4. Ruling on pleasure for a divorced wife after being alone before consummation.
5. The views of the Iraqi Personal Status Law.

#### **First: Defining the pleasure of divorce:**

Linguistically, pleasure: a noun derived from the pleasure, which is all that is used, enjoyed or enjoyed, and the pleasure, the benefit.<sup>(cx)</sup>

In the terminology: money that the husband must pay to his divorced wife in life.<sup>(cxi)</sup>

Second: The ruling on the pleasure of the divorced woman: God, may He be glorified and exalted, upon

divorce prescribed pleasure for a woman from compulsion for what happened to her from separation, and pleasure from luggage, which is something that a woman gives in order to relieve her sake, and that differs according to the ease and hardship of the husband, as the Almighty said :<sup>(cxii)</sup>There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing)).

((There is no blame if you divorce women before the marriage is consummated or the dowry is settled. But give them a 'suitable' compensation—the rich according to his means and the poor according to his. A reasonable compensation is an obligation on the good-doers)).

Ibn Abbas, may God be pleased with them both, said: ((The highest pleasure is a servant, then less than that money, then less than it is a dress)).<sup>(cxiii)</sup>

However, the jurists differed if the pleasure obligatory for every divorced woman? Or is it obligatory in some cases? Or for some divorced women rather than others?

Editing the point of disagreement: There is no dispute among the jurists regarding the assignment of pleasure to every divorced woman, but their disagreement is in the obligation.<sup>(cxiv)</sup>

Sayings on this issue: Where the jurists differed over four sayings?

The first saying: Every absolute has pleasure, and it is narrated on the authority of Imam Ali, may God be pleased with him<sup>(cxv)</sup>, and it is a narration in the Hanbali<sup>(cxvi)</sup> school of thought, and it is the choice of the Sheikh of Islam<sup>(cxvii)</sup>. And by this he said Al-Dhahriya<sup>(cxviii)</sup>, and Ibn Jarir al-Tabari chose it in his interpretation<sup>(cxix)</sup>. The second opinion: Every divorced woman has pleasure except for the one who was divorced before consummation, and she has been given a dowry. And by it, Abdullah bin Omar, may God be pleased with them<sup>(cxx)</sup> said and it is the saying of Imam Al-Shafi'i in his new madhhab<sup>(cxxi)</sup>, and it is a second narration according to the Hanbalis.<sup>(cxxii)</sup>

The third saying: That pleasure is not required except for the divorced woman before consummation and before a dowry is imposed for her. This is the doctrine of the Hanafis,<sup>(cxxiii)</sup> and this is what Imam Al-Shafi'i said in his old school of thought<sup>(cxxiv)</sup>, and it is the most famous of the Hanbali school of thought.<sup>(cxxv)</sup>



The fourth saying: that pleasure is not obligatory at all, but it is delegated. It is the Maliki school of thought. <sup>(cxxxvi)</sup>

Evidence and Discussion: Evidence for Those Who Say It Absolutely not required

1-That God Almighty restricted pleasure to the righteous and the doers, so the Almighty said :

((Reasonable provisions must be made for divorced women—a duty on those mindful 'of Allah')). <sup>(cxxxvii)</sup>

There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing. <sup>(cxxxviii)</sup> And if it was obligatory for everyone, the righteous and good people would not have been designated by it.

It was objected on three grounds:

The first aspect: that God, may He be glorified and exalted, has commanded all His creation to be among the good and the righteous. <sup>(cxxxix)</sup>

The second aspect: that the obligation if it does not pertain to the philanthropist and the pious. <sup>(cxxx)</sup>

The third aspect: that an offer for the benefactor and the pious does not negate the offer for others, as God Almighty said: <sup>(cxxxxi)</sup>

, and this does not deny that it is a guidance for all of the people, as in other texts. <sup>(cxxxii)</sup>

1. If pleasure was obligatory, it would have been well-known like all other obligations in money. When it was not like that, it came out of the limit of obligations to the point of deprecation. And it became like a bond and a gift. <sup>(cxxxiii)</sup>

He objected to it in two ways:

The first aspect: Failure to estimate her by a limit does not preclude her obligation, because alimony for the wife is one of the most obligatory expenses, yet she does not have an estimated limit but the reference in it to the custom.

The second aspect: that its estimation came from some of the Companions - may God be pleased with them all - as it was narrated on the authority of Abdullah Ibn Abbas, may God be pleased with them, as mentioned above.

Evidence and discussion: Evidence for those who say that there is no obligation of pleasure except for a divorced woman before consummation and before it is imposed:

((There is no blame if you divorce women before the marriage is consummated or the dowry is settled. But give them a "suitable" compensation—the rich according to his means and the poor according to his. A reasonable compensation is an obligation on the

good-doers)) <sup>(cxxxiv)</sup>. ((There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

((And if you divorce them before consummating the marriage but after deciding on a dowry, pay half of the dowry, unless the wife graciously waives it or the husband graciously pays in full. Graciousness is closer to righteousness. And do not forget kindness among yourselves. Surely Allah is All-Seeing of what you do)

The significance of these two verses: that God Almighty divided women here in two parts:

The first one: with pleasure

And the second: by half of the dowry, which indicates the denial of pleasure in a right that is not imposed for it. <sup>(cxxxv)</sup>

He objected to it in two ways:

The first aspect: that the absence of pleasure in this verse for what it is supposed to do, and it was not included in it does not indicate that it is not obligatory at all. Since the evidence of obligation is learned from other evidence, which is the general meaning of the Almighty saying : <sup>(cxxxvi)</sup> ((For divorced women Maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous)); which permeates every divorced woman .<sup>(cxxxvii)</sup>

The second aspect: that the Almighty's saying includes the two mentioned sections, namely that which is required for it and not required for it. <sup>(cxxxviii)</sup>

This view may be stated as being contrary to the apparent one. The Almighty's saying: is mentioned after the first part that is not required for her, then he mentioned after that the second part, and it is required for her If the first part was not required of it, it is mentioned second, then there is a case for that.

1-That the combination of pleasure and the dowry in full - for the one who entered it - or half of it - for the one who was not entered into it - and it was imposed for her is a combination of two substitutes for something, because the pleasure is required in marriage instead of a few, and the dowry or half of it is also required instead of the few So the answer of pleasure with one of them combined the two allowances . <sup>(cxxxix)</sup>

It can be followed by non-acceptance: that pleasure is required instead of a few; Rather, the wisdom of its obligation is to compensate the woman's sins, and treat her kindly after divorce, especially since among the divorced women are those who are not obliged to spend the period of waiting period like the divorced woman three times according to the saying of some scholars.

As for the first: it was mentioned previously in the evidence of the previous saying, which is His Almighty saying: <sup>(cxl)</sup>There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing. As for the second: which is what is entered by it, their evidence for that is the general meaning of the Almighty saying: <sup>(cxli)</sup>For divorced women Maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous.

Evidence and discussion: The evidence for those who say that muta'a is obligatory except for a divorced woman before consummation.

As for their evidence for excluding the divorced woman before consummation and after the imposition of the obligation of pleasure for her, it is the evidence of the previous saying that has been mentioned and discussed previously.

And because the Almighty said about the women of the Prophet, may God's prayers and peace be upon him: <sup>(cxlii)</sup>O Prophet! Say to thy Consorts: "If it be that ye desire the life of this World, and its glitter,- then come! I will provide for your enjoyment and set you free in a handsome manner. And his husbands are included in them, and in spite of that it is prescribed for them to have pleasure <sup>(cxliii)</sup>.

And because what happened to her from the dowry was a substitute for intercourse, and vulgarity remained without an allowance, so she required pleasure as the delegated before entering <sup>(cxliv)</sup>.

As for their evidence that it is obligatory for others, and they are two:

The first: the divorced woman before consummation and before it is imposed. And the second: the woman whom was married.

The evidence and its discussion: The evidence for those who say that it is necessary for pleasure at all:

Evidence for the necessity of pleasure for two types of divorced women, namely the divorced woman before consummation and before it is imposed for her, and the divorced woman with whom she is admitted, has been presented in the evidence for the previous saying, but the evidence remains for the necessity of pleasure for the divorced woman before consummation and after imposing her dowry, which is mentioned in the Almighty saying: <sup>(cxlv)</sup>And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (Is due to them), unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to

righteousness. And do not forget Liberality between yourselves. For Allah sees well all that ye do)).

Does she have fun with half of the dowry? The owners of this saying required her to have fun with half of the dowry because she entered into the general meaning of the Almighty saying: <sup>(cxlvi)</sup>For divorced women Maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous.)) So whoever divorces from this generality must have evidence <sup>(cxlvii)</sup>

**Weighting:** After reviewing and discussing the sayings of the jurists and their evidence, it seems to me that the strongest sayings are what two sayings appear, which are the first saying and the second saying, and the first is the most powerful of them, which is the saying that pleasure is absolutely permissible, and that is because of the public's frankness in the Almighty saying: <sup>(cxlviii)</sup>There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

And the other verses also and in order to achieve the benefit without harm. The divorced woman has no doubt that her heart will be broken by what happened to her, and she may have thought that she has other rights over the husband. Then it is most likely that she has fulfilled her dowry and nothing is left of him, so nothing of the money is returned to her from her husband. ; It will be eased for what has befallen her, and it will not harm the husband. As it is as much as his hardship and ease.

The absolute uninvolvement remain; the dowry has been imposed on her, so she has half of it, so can she have pleasure with this half? This is the issue that is disputed by the first and second sayings, but the reward of pleasure for her does not contradict what is required of her half of the dowry, because what is included in her is the full dowry with pleasure, so that she is obligated with the first half, and pleasure is a remedy for her risk because of her divorce, as she needs that. As for the dowry or half of it, it is an established right of the contract, not because of divorce.

### **Third: How much is Divorce Pleasure:**

Sayings on this issue: The jurists differed as to the extent of the pleasure of divorce on four sayings:

The first view is: It's three pieces of armor, and the veil, and a blanket and thus narrated from al-Hasan, Sa'eed ibn Musayyib, and Abdullah Ibn Abbas - may Allah be pleased with them - he said: ((the highest of pleasure is a servant, and then dress, then the expenses)) <sup>(cxlix)</sup>It is the Hanafi school of thought. <sup>(cl)</sup>

His saying Almighty is in the sign of pleasure: <sup>(cli)</sup>, There is no blame on you if ye divorce women before

consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

and pleasure is a name for the performances in the custom; because of the obligatory robes in the assets of counterpart al-Shara, a cladding (dressing) that must have a case that the marriage and preparing, and what is of the lowest of women, and hid it when you go out three dresses.

The pleasure does not exceed half of the dowry for the same, and it is not less than five dirhams. Because it is obligatory on the path of compensation, and less compensation is fixed in the marriage half of their lives.<sup>clii</sup>

The second view: his companions went on not specifying an amount for pleasure, and they made it in what the absolute can afford, according to his wealth in the few and many, which is the Maliki doctrine.<sup>cliii</sup> For God Almighty says: <sup>cliv</sup>There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

Imam said Quraafi (<sup>clv</sup>) - Allah's mercy in the amount of gems entrusted to his choice for not obligatory and it is preferable appreciation and pleased him; for his Almighty saying: (<sup>clvi</sup>)There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

The third saying: It is desirable for pleasure to be servant or thirty dirhams, when it was narrated on the authority of Ibn Abbas, may God be pleased with him, that he said: It is desirable for him to entertain it with a servant, and if he does not do it, then with clothes, and on the authority of Ibn Omar, may God be pleased with him, he said: He should enjoy it for thirty dirhams. And it was narrated from him that he said: He enjoys her as a slave-girl and is obligatory in two ways: one of them is what falls under the name of money and the second is the doctrine that the ruler appreciates her because the Almighty says: (<sup>clvii</sup>)There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor

according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing. and is he considered a husband or wife there are two aspects: one of them is considered in the case of the husband For the verse and the second is considered as it is, because it was replaced by the dowry, so it was considered. It is the Shafi'i school of thought. (<sup>clviii</sup>)

The fourth saying: If the spouses agree on the amount of pleasure, then it is appreciated by that. Because the right to them does not leave them. It is the Hanbali school of thought.

As for if they were to differ, several narrations were narrated on the authority of Imam Ahmad, may God Almighty have mercy on him:

The first narration: It is the Hanbali school of thought: the highest is a servant, this is if he is affluent, and if he is poor, her pleasures are covered with a shield, veil, and a garment in which she prays.

And the second narration: The judgment is due to the ruler. It is one of my Shafi'i sayings: Because it is a matter that the Shari'a did not respond to in its estimation, and it is something that requires diligence, so it must be referred to the ruler, like all mujtahids.

The third narration: It is estimated that coincides with half of the dowry of the same dowry. Because it is his allowance. You must appreciate it (<sup>clix</sup>) for the explicit saying of Almighty Allah: (<sup>clx</sup>) There is no blame on you if ye divorce women before consummation or the fixation of their dower; but bestow on them (A suitable gift), the wealthy according to his means, and the poor according to his means;- A gift of a reasonable amount is due from those who wish to do the right thing.

Decision: After we have presented the sayings of the jurists and their evidence, it seems to me that no evidence has been received from the Holy Qur'an or the Sunnah that determines the amount of pleasure. ; Thus, it is more likely that the Malikis say that its amount is not specified, and that it is left to the husband according to his condition of wealth and poverty, and God Almighty knows the right thing.

Fourth: Ruling on pleasure for a divorced woman after being alone before consummation:

Editing the place of disagreement: Before clarifying the sayings of the jurists on the rule of pleasure for the divorced woman after being alone before consummation, it should be noted that the Hanafis differentiate in the rule of pleasure between the divorced after the right alone before entering, and between the divorced after the corrupt khulwah before consummation, noting that other jurists did not differentiate this The separation, so the aforementioned ruling in the case of Hanafi doctrine applies to all divorced women after being alone together before entering, regardless of the type of consummation.

With this previous summary of the ruling on the pleasure of divorce, the ruling on pleasure for a

divorced woman after being alone together before consummation is as follows:

The first saying: that the divorced woman after the correct solitude before entering her is the rule of entry with her, so pleasure in her right is desirable, and for the divorced woman after the corrupt khulwah before consummation, she must have pleasure if the dowry is not named, and if it is called her pleasure is desirable. It is the hanafi doctrine.

The second saying: Pleasure is desirable. It is the Maliki school of thought.

The third saying: A divorced woman is obliged to have pleasure if she is not given a dowry, but if she is given a dowry, then she is not obligated.

Fourth saying: It is obligatory for a divorced woman to have pleasure if she does not have a specified dowry, and if she has a specified dowry, then pleasure is desirable for her. It is the correct of the Hanbali school of thought.

The fifth opinion: The obligation of pleasure for the absolute woman. It is a virtual doctrine.

The decision: After we have reviewed the sayings of the jurists, what seems to me to be more preponderant in the ruling on the pleasure of divorce is that it is desirable for all divorced women, so pleasure is desirable for the divorced after being alone together before consummation.

### **The views of the Iraqi Personal Status Law :**

Article twenty-one of the Iraqi Personal Status Law stipulates that: [The wife is entitled to all the dowry called entry or the death of one of the spouses, and she is entitled to half of the dowry called divorce before entry], and the twenty-second article states: [If the division (divorce) falls after entering into An invalid contract, if the dowry is named, then the lesser dowry is required than the one named, and if it is not named then the dowry is required.

So the wife deserves half of the dowry in the following cases, including that the separation between the spouses takes place before consummation, there is no dispute between the jurists that divorce before entry is fair to the dowry if the dowry is named, but if there is no named dowry and the divorce took place before entry, then the divorced woman deserves pleasure which is equivalent to a dress For those like her, and that judge estimates that no more than half of the dowry of the same. <sup>(clxi)</sup>

### **Looking at these previous texts, the following is noted:**

1. The law has restricted the necessity of pleasure for a divorced woman before consummation to a woman who has not been given a dowry, and in this regard he has taken the standard in the Shafi'i and Hanbali schools, and this is contrary to what is more likely to me.

2. That the law required pleasure for all divorced women before consummation for whom a dowry was not specified, and it did not differentiate between a person who was alone in a valid or invalid seclusion, and a person who did not violate it, as the text of the law was general in the case of a divorced woman before consummation. Based on this general rule, pleasure is required for the divorced woman after being alone before consummation if she does not have a specified dowry, whether the khulwah is valid or corrupt, and the law in this is in agreement with the majority of jurists, and is contrary to the Hanafi school of thought, which differentiated in the ruling of pleasure between valid and corrupt seclusion.

3. The law did not set a specific amount, but rather made an upper limit for it that does not exceed half of the dowry of the same, and the judge assesses it in no more than this limit. The law took one of the narrations on the authority of Imam Ahmad, may God Almighty have mercy on him that the appreciation of pleasure is left to the judge's discretion, but it is restricted to the judge's discretion. By not exceeding half of the dowry of the same, they took the Hanafi school of thought, which is one of the faces in the Shafi'i school of thought, and what was adopted by the law is contrary to what I prefer.

### **The third topic**

#### **The right of a divorced woman after being alone before entering into the waiting period: -**

#### **Preface:**

Before talking about the entitlement of the divorced wife after being alone and before entering into the waiting period, it is advisable to explain whether or not she must have the waiting period for divorce. As the discussion of her entitlement to the waiting period is a branch of the necessity of waiting for her, and the following is an explanation:

Ruling on waiting period for divorce after being alone together before consummation:

Liberating the point of disagreement: The waiting period for the woman before consummation is required if the husband makes a valid contract<sup>(clxii)</sup> with her and dies, The waiting period for the woman is required after consummation, due to divorce <sup>(clxiii)</sup> annulment<sup>(clxiv)</sup>, curse<sup>(clxv)</sup>, devotion<sup>(clxvi)</sup> , or khula'a,<sup>(clxvii)</sup> by agreement<sup>(clxviii)</sup>.

The jurists fuqaha 'are also unanimously agreed on the necessity of the waiting period for the divorced woman after consummation, and they are unanimously agreed that it is not obligatory for the divorced woman before being alone and entering.<sup>(clxix)</sup>

They differed as to the necessity of the waiting period for the divorced woman after the correct solitude before entering<sup>(clxx)</sup> into two sayings:

The first opinion: The waiting period for a divorced woman is obligatory, with correct seclusion in a correct



marriage without the corrupt one. It is narrated on the authority of the Rightly Guided Caliphs, Zayd, and Ibn Umar. And it was said by Urwa, Ali bin Al-Hussein, Ataa, Al-Zahri, Al-Thawri, Al-Awza'i, and Ishaq<sup>(clxxi)</sup>, which is the Hanafi school of thought<sup>(clxxii)</sup>, Maliki<sup>(clxxiii)</sup>, Al-Shafi'i in his old sayings,<sup>(clxxiv)</sup> and Hanbali.<sup>(clxxv)</sup>

The second saying: That the waiting period is not required by being alone without intercourse, and this is what Imam Al-Shafi'i said in the new of his madhhab.<sup>(clxxvi)</sup>

The evidence and its discussion: the evidence of the owners of the first view:

1. The Almighty's saying: <sup>(clxxvii)</sup>

((Divorced women must wait three monthly cycles 'before they can re-marry'. It is not lawful for them to conceal what Allah has created in their wombs,<sup>1</sup> if they 'truly' believe in Allah and the Last Day. And their husbands reserve the right to take them back within that period if they desire reconciliation. Women have rights similar to those of men equitably, although men have a degree 'of responsibility' above them. And Allah is Almighty, All-Wise))

The indication: God Almighty imposed the enjoyment of the waiting period for the divorced woman and did not separate between entering and the correct solitude, so the waiting period is required by correct seclusion just as it is obligatory to enter (getting married).<sup>(clxxviii)</sup>

2. Consensus of the Companions. Imam Ahmad, Al-Athram, narrated with their chain of transmission on the authority of Zarara bin Awfa, who said: The Rightly Guided Caliphs decided that whoever loosened a veil or closed a door, the dowry was required, and the waiting period was obligatory. Al-Athram also narrated it on the authority of Al-Ahnaf, on the authority of Omar and Ali, and on the authority of Saeed bin Al-Musayyib, on the authority of Omar and Zaid bin Thabit. These issues were well known, and they were not denied, and they became unanimous.<sup>(clxxix)</sup>

He objected to it: What came on the authority of Omar and Ali - may God be pleased with them - that it is obligatory is interrupted.<sup>(clxxx)</sup>

3. And because the marriage contract is intended to marry, and to be able to fulfill - which is the correct khulwah - which takes the place of fulfillment in the provisions related to the contract such as the waiting period, similar to it with the lease contract.<sup>(clxxxi)</sup>

4. And because the marriage contract is based on benefits, and empowerment in it, the process of fulfillment of the provisions related to it, such as the lease contract.<sup>(clxxxii)</sup>

5. Because the obligatory surrender of the marriage took place by proper khulwah; The waiting period must be done as it is necessary to enter (getting married).<sup>(clxxxiii)</sup>

6. "And because its obligation is by way of healing the kinship, and the need to seek relief after consummation, not before it, except that the correct seclusion in a correct marriage was established as the place of entry into the obligation of the waiting period in which God Almighty has the right, because the right of God Almighty is preceded in his response; and because the submission to the obligation of marriage took place through khulwah. The valid waiting period is required by it as it is necessary to enter, other than being alone in a corrupt marriage, because the correct seclusion was established, but the place of entry into the necessity of the waiting period was established, although it was not a real entry because it was a cause leading to it, so it was established as a precaution for the reason, in place of the cause, in the precautionary measure.<sup>(clxxxiv)</sup>

The evidence and its discussion: The evidence of the owners of the second opinion: The owners of this doctrine have inferred the following:

1-Almighty Allah saying: <sup>(clxxxv)</sup>

Significance: that there is no waiting period for the absolute woman before she is touched, and that touching is intercourse.<sup>(clxxxvi)</sup>

And I answer him: The verse is specific to what has been mentioned of evidence that the waiting period is obligatory in seclusion without entering (getting married).<sup>(clxxxvii)</sup>

2. What was narrated on the authority of Ibn Abbas - may God be pleased with them both his Almighty saying: O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of 'Iddat have ye to count in respect of them: so give them a present. And set them free in a handsome manner.<sup>(clxxxviii)</sup> This man marries the woman and then divorces her before touching her, so if he divorces her, she becomes divorced from him, and there is no waiting period for her.<sup>(clxxxix)</sup>

This was followed by: what Ibn Qudamah - may God have mercy on him - said - "Ahmad's saying is not verified as is what was narrated otherwise - meaning the necessity of the waiting period".<sup>(cxc)</sup>

3. Because the waiting period is necessary for the innocence of the womb, and we have been certain of the innocence of her womb.<sup>(cxci)</sup>

Decision: After we have presented the sayings of the jurists, their evidence and discussion, what seems to me most likely is that the waiting period is not obligatory for the divorced woman after being alone together before entering, and it is the saying of the Shafi'is. The apparent meaning of the Holy Qur'an explicitly states that it is not obligatory upon non-entry, and that is by the Almighty saying: <sup>(cxcii)</sup> ((O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of 'Iddat have ye to count in respect of them: so

give them a present. And set them free in a handsome manner.

((O believers! If you marry believing women and then divorce them before you touch them,<sup>1</sup> they will have no waiting period for you to count,<sup>2</sup> so give them a "suitable" compensation, and let them go graciously)) Ahzab,49)

This noble verse is general for everyone who does not enter I did not see in it what was mentioned by the respondents to the waiting period, and what they mentioned in the first evidence of consensus is a non-Muslim, as it was shown through discussion that the effects narrated in it are not valid, and on the assumption that these effects are correct, consensus is not achieved. To disagree with Abdullah bin Abbas - may God be pleased with them - and on the assumption that his disagreement is not valid, so the consensus in this case is a silent consensus, and it differs in it among scholars, and some of them did not consider it a consensus at all. In the contract of rent, and the measure of khulwah over income, both of which are a corrupt measure of consideration for contradicting the text, which is the previous verse, and the fourth evidence is based on the fact that the waiting period is required as a precaution because it includes the right of God Almighty, and this is an indisputable evidence. Because God, may He be glorified and exalted, is the one who waived the waiting period for those who were not admitted to it at all, and the fifth evidence is that the khulwah is the place of entry because it is conducive to him as a precaution, and this is not Muslim. There is no evidence to prove it, and God Almighty knows what is correct.

This preponderance, which is not the necessity of the waiting period, is supported by the soundness of the refrained's reasoning for its existence that it is for which it is prescribed to ensure the innocence of the uterus, and this matter is needed upon the occurrence of entry. In its affirmation, and God Almighty knows what is right.

Eligibility for a divorced woman after being alone before entering into the waiting period:

We have come across that the jurists differed over two opinions regarding the necessity of the waiting period for the divorced wife after being alone before consummation, but it is envisaged that the waiting period is obligatory for her according to those who say that the waiting period is obligatory for her, which is the doctrine of the Hanafis, the Malikis, and the Hanbalis. There are three statements:

The first saying: She has accommodation and alimony as long as she is in the waiting period, and to it the Hanafi school is based<sup>(xciii)</sup> and it was narrated on the authority of Al-Thawri, Al-Hassan bin Saleh, Ibn Shabrama, Ibn Abi Layla and others, and it is a narration on the authority of Ahmed. <sup>(xciv)</sup>

The second saying: She has the accommodation without the alimony: and to it the Maliki <sup>(xcv)</sup> and Shafi'i <sup>(xcvi)</sup> and it is a narration according to the Hanbalis. <sup>(xcvii)</sup>

The third saying: It has no maintenance or housing: this is the Hanbali school of thought. <sup>(xcviii)</sup>

Decision:

After reviewing the sayings of the jurists, it seems to me the preponderance of not having to spend on waiting period after being alone before consummation, because it is based on the necessity of the waiting period for her, and I have shown that the most correct is that the waiting period is not obligatory.

### The position of the Iraqi Personal Status Law:

There is no special text in the Iraqi Personal Status Law explaining the ruling on waiting period for a divorced woman after being alone together before consummation, and this ruling can be reached by looking at the following texts:

1. Article 38 stipulates: "Divorce is of two types: revocable: This is what is permissible for the husband to see his wife during her waiting period without a contract, and the return is confirmed by proof of the divorce.

And Baa'n: It is of two parts: Baynunah Minor: which is what is permissible for the husband to marry his divorcee with a new contract.

And Baynunah Kubra( Big evidence): It is forbidden for the husband to marry his divorced woman who divorced her three separate times and her waiting period passed Revocable divorce is every divorce that the husband signs to his wife if it is after consummation, and in return for money. As for irrevocable divorce, it is in the following cases:

-Divorce before real entering.

-If the divorce is based on money that the wife pays to her husband. It is a khula.

-To be a complement to the three.

Divorce signed by the judge, which is the judicial separation.

This article made divorce before consummation a permanent divorce, and it did not differentiate between divorce before entering after seclusion and before it, so it is general in all types of divorce before consummation, so it follows that divorce after being alone before entering is a definite divorce, whether the seclusion is valid or corrupt.

.1The Personal Status Law did not mention the waiting period for divorce after being alone before consummation, and it came in the second paragraph of Article 1: "If there is no legislative text that can be applied, then it is ruled according to the principles of Islamic Sharia that are more appropriate to the provisions of this law".

2- Article 47 of the Iraqi Personal Status Law states: "The waiting period for the wife is required in the following two cases:

-If the division occurred between her and her husband after consummation, whether it was from a revocable or irrevocable divorce, minor or major, separation or abandonment, annulment or the option of puberty.

-If her husband dies, even before consummation with her.

3- Article 50 of the Iraqi Personal Status Law states: "The waiting period for a divorced woman is obligatory for her living husband, even if she is disobedient, and there is no maintenance for several deaths<sup>ccix</sup>".

And based on what was previously mentioned in the previous articles, where Article 47 stipulated that the waiting period for women is required, which is the divorced woman after consummation and the woman whose husband has died even before consummation. Being alone or before her, where the waiting period is not obligatory for her, and if the waiting period is not required for her, then there is no alimony for her, as is understood in Article 50 that alimony is for the woman in the iddat (waiting period), and this divorced woman after being alone and before consummation is not her waiting period. Likewise, the law did not indicate the type of alimony for the woman in the waiting period.

#### **The fourth topic:**

##### **The right of a divorced woman after being alone with before entering into inheritance**

This topic has two requirements:

**The first requirement: the effect of divorce on the inheritance between spouses.**

**The second requirement: the inheritance of a divorced woman after being alone, before entering into the disease causing death.**

**The first requirement: the effect of divorce on the inheritance between spouses:**

Among the financial rights that arise from the marriage contract: inheritance between the two spouses, so whoever dies first will inherit the living as long as the marriage contract between them remains until the time of death. And this is surely agreed by the jurists, <sup>(cc)</sup> In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah; and Allah is All-knowing, Most Forbearing). <sup>(cci)</sup>

But if the husband divorces his wife and then one of them dies after the divorce, the ruling on inheritance between them includes the following details:

First: The effect of revocable divorce on the inheritance between spouses:

The jurists are unanimously agreed that if a man divorces his wife a revocable divorce regarding his health, or his illness, the inheritance between them remains in place during the waiting period. This is because reactionary is a wife who is attached to his divorce, back and devotion, and has the right to hold her back without her consent, no guardian, witnesses, or a new dowry. <sup>ccii</sup>

Second: The effect of irrevocable divorce on the inheritance between spouses:

But if the divorce is final in the disease causing death then the jurists differed concerning it whether the divorced woman inherits at that time or not, according to two sayings:

The first view is that the divorced woman inherits from her divorced woman in sickness. It is narrated on the authority of Umar, Uthman, Urwa, Shurih, al-Hasan, al-Sha'bi, al-Nakha'i, al-Thawri, and Ibn Abi Layla, and it is the Hanafi school, the Maliki school, and the Hanbali doctrine, and it is the old saying of Imam al-Shafi'i. Her waiting period, and she does not inherit from him if he dies after it has expired, and the Malikis said she inherits from him if he dies during the waiting period or after that, even if she marries another husband. And the Hanbalis said in the well-known that he inherits from him if he dies during the waiting period or after that unless she marries another husband, and these three sayings mentioned at a time Its inheritance are found in the Shafi'i school based on the old saying of being inheriting.

The Hanafis also went that the divorced wife does not inherit with them if the divorce is with her consent, and if it is not with her consent, she inherits, and according to the Malikis, she inherits whether the divorce was with her consent or not, and the Hanbalis inherits her if her divorced woman is accused with the intention of depriving her of the inheritance, but if he is not accused with the intention of depriving her of her, as if She asked for divorce, does not inherit.

The second view is that the divorced woman is a permanent divorce in the event of a disease causing death, <sup>(cciii)</sup> and she does not inherit at all. It was narrated on the authority of Imam Ali, Abd al-Rahman bin Auf and Utbah bin Abdullah bin al-Zubayr, and it is the saying of Imam al-Shafi'i in his new madhhab, <sup>(cciv)</sup> and it is the most correct view of the Shafi'is.

The evidence and its discussion: The evidence of the owners of the first opinion: The authors of this statement made the following evidence:

1. The consensus of the Companions, may God be pleased with them. The inheritance of the woman was

narrated from a group of companions without denying, such as Umar, Othman, Ali, Aisha, and Abi bin Kaab - may God be pleased with them - because it was narrated on the authority of Ibrahim al-Nakha'i that he said: Erwa al-Barqi came to Shurayh with five qualities from Umar - may God be pleased with him - among them that if a man divorces his wife while he is sick three times, she inherits from him as long as she is in her waiting period, and it was narrated on the authority of al-Sha'bi that he said: Umm al-Banin, daughter of Uyaynah ibn Husn, was with Uthman - may God be pleased with him - when he died, he divorced her, and he was sending Good news to her, and when he was killed, she came to me - may God be pleased with him - and she mentioned that to him, so Ali - may God be pleased with him - said he left her, even if he was about to die, he divorced her, and he inherited her.

It was narrated that Abd al-Rahman bin Auf divorced his wife Tamadur al-Kalbiyya in his last three divorces, and Umm Kulthum, the daughter of Uqbah, the sister of Othman bin Affan, inherited her - may God be pleased with him - and it was narrated that he said what I accused him but I do not want it to be Sunnah.

Hisham bin Urwah narrated on the authority of his father on the authority of Aisha - may God be pleased with her - that she said: The divorced woman will inherit three times while he is sick, as long as she is in the waiting period, and it was narrated on the authority of Abu Ibn Kaab that she inherits as long as she does not marry.<sup>(ccv)</sup>

It follows this: that the unanimous claim is not valid; Because of the existence of disagreement among the Companions regarding this ruling, Ibn al-Zubayr - may God be pleased with him - said in the hadith of Tamadur: If the matter was up to me, I would not have inherited her.

And Abd al-Rahman bin Auf - may God be pleased with him - said: I did not divorce her to harm or escape.<sup>(ccvi)</sup> I answer Ibn al-Zubayr's saying: The disagreement is not proven by his saying. Because it is possible that the meaning of his saying: If I were I would not have inherited her, meaning that it does not inherit from me, and it is possible that its meaning appears to him from diligence and righteousness. If I were in his place, he would not have appeared to me, so it was a correction for him in his ijtihad and that the right to his diligence does not prove disagreement with the possibility rather, he carried it in the manner in which the approval was first achieved, and it is possible that she had asked for divorce, and Uthman - may God be pleased with him - saw her inheriting with her asking for divorce, then he said: If I were I, he would not have inherited her asks for divorce, when Uthman inherited her - may God be pleased with him - with her question of divorce, then when there is not. The first question is that it was narrated that Ibn al-Zubayr - may God be pleased with

him - only said that in his mandate and there was consensus before him on the succession of them, so his disagreement after the occurrence of the agreement among them does not insinuate the consensus. Because the extinction of the age is not a condition for the validity of consensus on what was known in the fundamentals of jurisprudence.<sup>(ccvii)</sup> I answer: Ibn Auf - may God be pleased with him - said that he did not deny the inheritance, but denied himself the charge of desertion until it was narrated that Uthman-may God be pleased with him - used it, and he said: If I died I inherited her from you, then he said: I know that I will not divorce her by harm or escape.<sup>(ccviii)</sup>

1. And because the divorced intentionally corruptly intends to inherit, so it is opposed to his intention, like the murderer who intends to hasten the inheritance is punished by depriving him.<sup>(ccix)</sup>

The evidence and its discussion: The evidence of the owners of the second opinion: The authors of this statement made the following evidence:

1. Because the reasons of inheritance are limited to womb, marriage and loyalty, and they have none of these reasons<sup>(ccx)</sup>, so by irrevocable divorce, the marriage is interrupted.<sup>(ccxi)</sup>

I answer him: that the inheritance of a divorced woman in death is based on the absence of the cause of inheritance in her right, which is the marriage that was removed by the irrevocable divorce, and this is a correct origin, but it appears to me that the divorced woman is excluded from it in the disease of death if the divorced person is accused with the intention of depriving her of the inheritance, then she inherits according to the evidence that the owners of the first opinion inferred, and so that divorce is not used as a means to harm this divorced woman, so it is inherited in order to block the excuse. The obligation to work by blocking excuses, because when the patient was accused of having divorced his wife in his illness in order to cut off her share of the inheritance. Whoever says blocking the excuses requires her inheritance, and whoever does not say that the excuses are blocked and notices the necessity of divorce does not require her to inherit.<sup>(ccxii)</sup>

2. Because if she died, he would not inherit her by agreement.<sup>(ccxiii)</sup>

I answer him: With the difference between her inheriting from him and his inheriting from her, she inherits from him. Because he is accused with the intent to deprive her of the inheritance by divorcing her in the illness of death that he thinks most likely he will die, treating him contrary to his intention, and this meaning is present in her inheritance from him only, and is not present in his inheritance from it.

3. Because it is irrevocable, it does not inherit as the valid one, or as if the divorce was by her own choice.<sup>(ccxiv)</sup>

I answer him: There is a difference between the divorced woman in the case of health and the divorced



woman in the event of illness, and in the event of illness he is accused of intending to deprive her of inheritance, and this is not the case if he divorces her in the case of health, and likewise if the divorce was by her choice, this indicates the absence of the intention to deprive her of her inheritance. Unlike divorce without her choice, it is presumptive to deprive him of the inheritance.

**The Decision:** After we have presented the sayings of the jurists, their evidence and discussion of them, it becomes clear that the evidence of those who say that she is deprived of the inheritance is weak. What seems to me is the first saying that the divorced wife inherited after her divorce in the case of death if the divorced person is accused with the intent to deprive her of inheritance.

As for the Iraqi Personal Status Law: it went to the non-occurrence of the divorce of the patient from the disease of death, and by this saying it is contrary to all the jurisprudence schools that go to the occurrence of his divorce, and that the wife inherits him if he dies from his illness.

Where Article (35/2) of the applicable Personal Status Law stipulates: ((The divorce of the persons whose statement follows: the patient is sick with death or in a situation similar to death if he dies in that disease or that situation, and his wife inherits him)).

Some writers commented on that by saying: ((He has confused between the non-occurrence of divorce and the inheritance of the wife, so we call for a review of this text and its amendment and the introduction of what is agreed upon in Islam from the occurrence of the divorce of the patient is the disease of death if the divorce is in a state of perception, feeling, and insurance, and that is For the following reasons: -

1. It is contrary to what the Muslim jurists have agreed upon.
2. Contrary to what was agreed upon by the laws of the Arab and Islamic countries.
3. The wife's inheritance rights are guaranteed with the occurrence of divorce while he is in death sickness.
4. If the legislator intended the sick patient to die, a patient who was unconscious and discerning, then this ruling was mentioned in the first paragraph of the text, so this would be a filling that must be avoided)).
5. As for the Iraqi judiciary, it has many rulings on this, including what the Iraqi Court decided: ((Divorce is the right of the husband, so the judge has no right to prevent him from imposing him to insist on that and he was worthy of him)).<sup>(ccxv)</sup> This is an explicit indication that the Iraqi legislator has missed his mind that divorce is the right of the husband, and that Islamic jurisprudence was more precise in this matter. Therefore, it was more appropriate for the legislator to address the issue in light of the jurisprudence dealing with it. In fact, this court has confirmed this in another decision, which states: ((And because divorce is a legitimate right for the

husband, he can use it whenever he wants, even if it is the most hated of what is permissible to God))<sup>(ccxvi)</sup>. It is worth noting that the Iraqi Court of Cassation has stipulated that in order to achieve the divorce of the fugitive, the husband must be ill with death disease and that he dies, and the wife is in the waiting period.<sup>(ccxvii)</sup> A decision has been received for her: ((A divorced woman inherits her divorced if he dies within a year of his illness in which he divorced her, in order to prove his death in his illness which was He divorced her during the year and did not marry someone else.))<sup>(ccxviii)</sup> Response in another decision: ((Confirming death sickness in the separation lawsuit is that what is proven in the opinions of the jurists is that if the husband divorces his wife in the illness of death and then dies, then his divorce takes place according to Sharia, but his wife inherits him as the husband is considered a escaping from her inheritance, and his intention is returned to him)).<sup>(ccxix)</sup>

In Egypt, the Egyptian legislator considered the divorce of the patient to be a fact, but his wife inherits him if he divorces her without her consent and dies during her waiting period. Article 11 of the Egyptian inheritance law states: ((The divorced woman is considered dead in the disease of death in the judgment of the wife if she does not accept and the divorce man and dies. The Absolute One in that disease and she is in his waiting period))<sup>(ccxx)</sup>

In this, it follows the doctrine of Imam Ahmad bin Hanbal in the inheritance of a divorced woman in a permanent divorce in the death illness of her divorced man, and in contradiction to the Hanafi doctrine.

As for the Egyptian judiciary, it also has many rulings on this issue, as the Egyptian Court of Cassation ruled that: ((Leader of the text of Article (11/3) of the inheritance laws No. (77) for the year 1943 that the man-made legislator decided, in accordance with the Hanafi school of thought, that whoever was ill is dying and His wife is divorced without her consent and the state of his husband has died, and the wife is still in the waiting period, because irrevocable divorce takes place on his wife and it is proven from the time of its issuance because he is qualified to inflict it, but she inherits him, however, on the condition that she is worthy of his inheritance from the time of her release to the time of his death, even though the divorce is permanent and does not inherit because the infallibility is interrupted by the mere divorce based on the fact that when he showed her the state of his illness, he was considered a reserve fugitive, and his intention returned to him for her and the legacy is proven to her.<sup>(ccxxi)</sup> And it also ruled: ((That the patient is ill with death if he divorces his wife and then dies and divorced her in the waiting period is considered - when the conditions are met. - By divorcing him as a fugitive from the inheritance and presenting the assumption that he divorced his wife a

permanent divorce in the illness of death intending to deprive her of her right that was attached to his money since the onset of the disease. This means that the permanent divorce predicts itself without other evidence of intent so the patient and seeking out what he owes)). (ccxxii)

As for the French legislation,(ccxxiii) in contrast to the Arab legislation that is based on the provisions of Islamic Sharia law, it has adopted the restricted divorce system, and the divorce regulations with articles (229-232) from the French civil group. It can be concluded from these articles that the reasons for divorce in French law are limited. There are three: - (ccxxiv)

(1) The wife's fornication according to the provisions of Article (229) of the French Civil Code (ccxxv), or the husband's fornication according to the provisions of Article (230) of the French Civil Code .(ccxxvi)

2- Sentencing the husband to a criminal penalty according to the provisions of Article (231) of the French Civil Code ccxxvii

3- Cruelty and ill-treatment according to the provisions of Article (232) of the French Civil Code. ccxxviii

### **The second requirement: the inheritance of a divorced woman after being alone and before entering into the disease of death.**

The jurists fuqaha 'differed regarding divorce before consummation, whether it is revocable or irrevocable, according to two sayings:

The first saying: It is a definite divorce, and this is the view of the Hanafis (ccxxix), the Maliki (ccxxx) and the Shafi'is.(ccxxxi)

And the second saying: her divorce is a revocable divorce, and this is the Hanbali school of thought (ccxxxii); For the statement that he inherits from her divorced woman if he dies during her waiting period unanimously, as stated above in the first requirement. As for saying that it is a final divorce, if it is in a state of health, she does not inherit from her husband according to the consensus of scholars , as stated above in the first requirement.

Death, based on the saying of the majority of jurists who say the inheritance of the divorced woman in the disease of death, which is more likely to the researcher, but it should be noted that those who say that the divorcee bequeathed a permanent divorcee in the disease of death did not agree on the ruling on the inheritance of the divorced woman after the khulwa before entering into the disease of death, and the aim of this is The requirement is that their statements be explained in that, and the weighting between them, and the researcher has noticed that there is no text on the ruling on the inheritance of the divorced woman in the disease of death after being alone, before entering into the books of the four schools of thought after a long research, except rarely.

Perhaps the reason for this is that there is no special provision for her that differs from the rest of the

divorced women. A permanent divorce in the illness of death, which requires specifying her in words. When the legacy of the divorced woman is mentioned in the disease of death, this includes all the divorced women who are in the disease of death, who escaped without entering, and who did not was distracted by it and did not enter, and who entered it. Therefore, in the following, I will review the texts that I found about the inheritance of the divorced woman after the khulwa before entering, and then explain the opinions of the jurists regarding her inheritance based on that, and on the above. A statement of the ruling on the inheritance of a divorced woman in the illness of death:

The Hanafi school of thought: Ibn al-Hamam - may God have mercy on him - said: ((Know that our companions established the correct khulwah in place of intercourse with regard to some rulings: confirming the dowry and they did not place them in its place in the compassionate, and dissolving it for the first ... and if he vacated a woman then divorced her, no Her daughters are forbidden, and he does not inherit from her if she dies during the waiting period, because of due precaution in these rulings)). ccxxxiii

Ibn al-Najim - God's mercy -: ((I saw in the collection of Alfsolan (two chapters) quoting a judge Khsaf literature as serves as Intercourse in the right to supplement the dowry and the necessity of preparing and did not take his place in the rest of the provisions. This is the investigation and did not establish his place against chastity that ratify not to enter but pleaded for rule of chastity, although one of them acknowledged by the sincerity of the right to the same dowry without its owner as Mabsoot book and in the sanctity of girls and solve them for the first and Mujtaba)). ccxxxiv

It is taken from the two previous texts that a divorced woman after being alone before consummation does not inherit from her divorced man, just as he does not inherit from her in the waiting period, meaning that divorce after being alone before consummation cuts off the inheritance between the spouses, and these two texts explain the difference of khulwah from entering into inheritance in detail, and other sources indicated that this difference is without an explanation and a statement. ccxxxv Ibn Abdin - may God have mercy on him - mentioned another saying in the Hanafi school of thought that she inherits. And Ibn al-Shuhafa narrated in the contract of al-Fara'id another saying that she inherits, and if they agreed not to enter after being alone, Al-Rahmati said, and this is what is in the explanation: If he divorced her during his illness after the correct solitude before intercourse and died in her count. This explanation was approved by his student Hamid Effendi Al-Emadi, the Mufti of Damascus. ccxxxvi

What is noticed in most of the texts of the Hanafi jurists regarding the inheritance of the divorced woman after being alone before consummation is that she spoke

about it, which includes the divorced woman in the disease of death, and the divorced woman in the state of health. But it is in the absolute in the disease of death, and God knows best.

It is summarized from the above that in the inheritance of a divorced woman in the disease of death after the correct seclusion before entering upon the Hanafis, there are two sayings: one: she inherits, and the other: she does not inherit. I did not understand the ruling on the divorcee after the corrupt consummation before entering into what I could see.

The Maliki school of thought: I did not find a text on the inheritance of the divorced woman in the disease of death after being alone before entering into what was easy for me to see from the Maliki books, bearing in mind that the Malikis went to say about her inheritance if the patient died after the waiting period ended or died after she got married, based on the intention of the husband Depriving her of the inheritance most likely, and his intention is to be answered as a punishment contrary to his intention,<sup>ccxxxvii</sup> and there is also a text in the code that came in a general formula confirming the inheritance of every divorced woman dying in the disease of death, and this text: "I asked an owner about a man swearing to divorce his wife if she entered a house, and she enters it, He is sick, so she divorces him, and then he dies from his illness that affected him? (He said): Malik said: Yes, you inherit him, (I said) I am the one who entered (he said) and if I enter, because every divorce takes place and the husband is sick and he dies of his illness, that is because she inherits him."<sup>ccxxxviii</sup> In general, all divorced women are included in the disease of death, including those who are divorced after being alone before entering, regardless of the type of seclusion, and God knows best.

The Shafi'i doctrine: I did not find a text on the inheritance of the divorced woman in the disease of death after consummation before entering into what I could see from the Shafi'i books. The new saying of Imam al-Shafi'i has already been stated that it is more correct that the divorced woman does not inherit the disease of death at all, so on this saying the divorced woman does not inherit in the disease of death after being alone before entering, regardless of the type of seclusion, and God knows best.

The Hanbali doctrine: Imam Ibn Qudamah - may God have mercy on him - stated that the divorced woman in the disease of death after being alone before entering her will inherit. Imam Ibn Qudamah, may God Almighty have mercy on him, said: (If he were not with her, and said: He would not have interrupted her preparing for death, and complements her dowry; because being alone is enough to prove that these provisions. this is the view of Abu Hanifa and his companions)),<sup>ccxxxix</sup> the text of Imam Bahooti - God's mercy be on him- that the absolute death disease before being alone and incomes inherit, he said: (((albeit Her father (i.e., the patient

showed the dreadful illness of death, his wife (before entering and being alone (his heirs) punishing him against his intention))<sup>ccxl</sup>. If she inherits before being alone and entering, then it is more appropriate after seclusion before entering, regardless of the type of seclusion and God knows best.

**The front Shiites:** I did not find a text on the inheritance of the divorced woman in the disease of death after being alone before entering, except that they see that she inherits - the divorced woman is permanent in the disease of death - unless she marries if more than a year has passed since the divorce, but if more than a year has passed, there is no inheritance to her, even if she did not marry.<sup>ccxli</sup>

**Al-Dhahriya:** I did not find a text on the inheritance of the divorced woman in the disease of death after being alone before consummation, but they do not see that she inherits - the divorced woman is permanent in the disease of death - even if death is immediately after the divorce as long as the divorce is permanent, because irrevocable divorce cuts off the marital relationship that is the cause of the inheritance.<sup>ccxlii</sup> This is the new saying of Imam Al-Shafi'i, about which Abu Ishaq Al-Shirazi said, is correct.<sup>ccxliii</sup>

Based on this disagreement regarding the inheritance of a divorced woman who is irreversible in the illness of death, the sayings of the jurists regarding the inheritance of the divorced woman in the disease of death after being alone before consummation have two sayings:

The first saying: She inherits. It is one of the two Hanafi sayings, the Maliki saying, the Hanbali and the Imamate.

The second saying: She does not inherit. It is the second view of the Hanafi, and the view of the Shafi'i on the more correct and the Dhahiriya.

### Decision and Weighting

After we have reviewed the sayings of the jurists and their evidence, it is more likely to me as previously that the divorced woman in the disease of death inherits from her divorced man if he is accused with the intent to deprive her of the inheritance, and the divorced woman in the disease of death after being alone - regardless of the type of seclusion - before entering a divorce, she is one of the divorcees. Dying in the disease of death, so the above applies to her, so she inherits from her divorced man if he intends to deprive her of the inheritance. Because of the evidence for this ruling, and the evidence for its preponderance, the aforementioned, and I could not stand after repeated searches for evidence or meaning that would make it a special ruling that contradicts the rest of the divorced women, a permanent divorce in death sickness according to the jurists who say that the Hanafi does not inherit. As the

Hanafis inherit with them the permanent divorced woman in the disease of death, while the jurists who prevent the inheritance of the permanent divorced woman in the disease of death, and they are the Shafi`is in the most apparent and external form, their evidence has already been discussed, and God knows the right.

### **The Views of the Iraqi Personal Status Law:**

As for the Iraqi Personal Status Law: The law did not stipulate the ruling on the inheritance of a divorced woman in death after being alone before consummation, but it went to the non-occurrence of divorce of the patient, the disease of death, and by this saying it is contrary to all the jurisprudential schools that go to the occurrence of his divorce, and that the wife inherits him if he dies of his illness.

Where Article (35/2) of the applicable Personal Status Law stipulates: ((The divorce of the persons whose statement follows: the patient is sick with death or in a situation similar to death if he dies in that disease or that situation, and his wife inherits him.

Some writers commented on that by saying: ((He has confused between the non-occurrence of divorce and the inheritance of the wife, so we call for a review of this text and its amendment and the introduction of what is agreed upon in Islam from the occurrence of the divorce of the patient is the disease of death if the divorce is in a state of perception, feeling, and insurance, and that is for the following reasons:-

- 1- It is contrary to what the Muslim jurists have agreed upon.
- 2- Contrary to what was agreed upon by the laws of Arab and Islamic countries.
- 3-The wife's inheritance rights are guaranteed with the occurrence of divorce while he is in died of sickness.
- 4- If the legislator intended a sick patient to die, a patient who was unconscious and discerning, then this ruling was mentioned in the first paragraph of the text, so this would be a mistake that must be avoided.

### **Conclusion**

#### **The Main Research Results:**

First: What is meant by being alone: the husband is alone with his wife after the marriage contract without intercourse.

Second: What is meant to enter: intercourse.

Third: The financial rights of a divorced woman after being alone before entering into the state are due in the sentence to four rights, which are: the dowry, the pleasure of divorce, the maintenance of the waiting period and the inheritance.

Fourth: The jurists differed regarding the financial rights of the divorced woman after the seclusion before consummation, and what is weightier for the researcher is as follows:

1-The full dowry is not decided by seclusion, so all divorced women after the solitude - regardless of their type - before entering the half of the named dowry are entitled in the event of a named dowry.

2-Anyone who has not been named to her for a dowry if she divorced after being alone - regardless of her type - before consummation, she does not have any of the dowry.

3-Pleasure is desirable for all divorced women, including those who are divorced after being alone - regardless of their type - before consummation. Pleasure has no specific amount, and its estimation is left to the husband according to his state of wealth and poverty.

4-The waiting period is not loved by the divorced woman after being alone before consummation, and therefore it is not conceivable that the waiting period is obligatory for her.

5- A divorced woman after the seclusion - is entitled to before entering the inheritance if her husband divorces her in the course of his death, accused of intending to deprive her of the inheritance.

**Fifthly:** The financial rights that the researcher concluded that the Iraqi Personal Status Law had approved it for a divorced woman after al- seclusion before entering the following:

1- The dowry, named in full, if she was divorced after the correct seclusion before entry, and half of the named dowry if she was divorced after the spoiled seclusion before entry.

2-A divorced woman who has not been named a dowry after proper seclusion before consummation is entitled to a full dowry. A divorced woman who has not been given a dowry if she is divorced after the corrupt privacy before consummation is not entitled to any of the dowry.

3- The law limits the necessity of pleasure for a divorced woman after being alone - whether valid or corrupt - before entering upon a person who was not given a dowry, and he did not set a specific amount for this pleasure.

4- A divorced woman after being alone with one another - regardless of the type of seclusion - before entering a residence is entitled only to the waiting period.

5-A divorced woman in the disease of death after seclusion before consummation inherits from her divorced woman regardless of the type of seclusion, and whether the divorce was with her consent or not, and whether it was because of the husband, or because of the wife, even if the divorce was by her request or seclusion.

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(i) See: Ibn Faris, Mu'jam al-Maqayyat al-Linguistics (2/204) Al-Johari, As-Sahah: (5/1860); Ibn al-Atheer, The End in Gharib al-Hadith and al-Athar: (2/74); Ibn Manzoor, Lisan Al-Arab (4/205); Al-Waseet Lexicon: (1/254)

(ii) See: Al-Jarjani, definitions: (p / 101); Waseet Lexicon: (1/254); Al-Zuhaili, Islamic jurisprudence and its evidence: (7 / 321-322); Encyclopedia of Kuwaiti Fiqh: (19/270).

(iii) See: Ibn Al-Hamam, Fath Al-Qadeer: (5/300); Ibn Qudamah, Al-Mughni: (7/192).

(iv) See: Al-Nawawi, Rawdat Al-Talibeen (5/574); Ibn Abdin, Haashiyat Ibn Abdin: (4/220); Al-Zuhaili, Islamic jurisprudence and its evidence: (7/251); Dr.. Abd al-Karim Zaidan, in detail in Ahkam al-Mar'a: (7/49); Muhammad Rawas Qalaji-Hamid Sadiq Quneibi, Dictionary of the Language of the Jurists (p. 436); The Kuwaiti Fiqh Encyclopedia: (24/64).

(v) See: Ibn Al-Mundhir, Al-Ashraf (5/33); Ibn Hubaira, disclosure: (8/161)

(vi) An-Nisa': 4.

(vii) See: Al-Qurtubi, which includes the provisions of the Qur'an: (6/44).

(viii) An-Nisa': 24.

(ix) An-Nisa': 25.

(x) See: Al-Dabbousi, (p / 393); Al-Samarqandi, Tuhfat Al-Jurists: (p. 282); Al-Kasani, Bada'i Al-Sana'i: (2/559); Indication of the facts: (2/136); Ibn Rushd, Bidaya al-Mujtahid: (3/37); Al-Shafi'i, mother: (6/182); Al-Amrani, Al-Bayan in the School of Imam Al-Shafi'i: (9/448); Ibn Qudamah, Al-Mughni: (10/138); Ibn Hazm, Al-Mahalla: (9/466).

(xi) Al-Baqarah: 236.

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#### Endnotes:

(xii) Contrary to what some jurists decide that the dowry is a substitute and a substitute. See: Abi Zahra, Personal Status (p / 195); The Quranic Presentation of the Issues of Marriage and Band: (p / 194).

(xiii) An-Nisa': 4.

(xiv) See: Al-Tabari, Jami' al-Bayan fi Tafsir al-Qur'an (3/583), al-Mawardi, Tafseer al-Mawardi (1/451); Ibn Katheer, Interpretation of the Great Qur'an: (2/213).

(xv) See: Al-Mawardi, Tafseer Al-Mawardi: (1/451).

(xvi) See: Al-Qurtubi, which includes the provisions of the Qur'an (6/44). See also: Ibn Atiyah, the brief editor of Tafseer Al-Aziz Al-Kitab (2/469).

(xvii) See: Ibn Qudamah, Al-Mughni: (10/97); Ibn Qudamah, al-Sharh al-Kabir: (21/79)

(xviii) The dowry is also the first feeling of financial responsibility that a man experiences towards his wife, as a title of his financial responsibility towards his future family. This is in addition to the fact that the dowry is a pillar of great effectiveness in consolidating the marriage complex and immunizing marital life against the dangers threatening it

xix Al-Tabarani in Al-Mujam Al-Kabir: (11/355),

(xx) See: Ibn Qudamah, Al-Mughni: (9/414).

(xxi) See: Al-Nawawi, Rawdat Al-Talibin: (5/574).

(xxii) See: Ibn Al-Hamam, Explanation of Fath Al-Qadeer: (3/205).

(xxiii) See: Al-Amrani, Al-Bayan: (9/367); Ibn Abdin's Note: (4/219).

(xxiv) Surah An-Nisa': 21.

(xxv) See: Ibn Katheer, Ibn Katheer, Interpretation of the Great Qur'an: (2/245)

(xxvi) See: Al-Samarqandi, Tuhfat Al-Fuqaha '(p. 283); Al-Kasani, Bada'a Al-Sana'i: (2/564); Ibn Rushd, Bidaya

al-Mujtahid: (3/42); Al-Shafi'i, Al-Umm: (6/153); Al-Amrani, Al-Bayan: (9/369); An-Nawawi Rawdat Al-Talibin: (5/575); Ibn Qudamah, Al-Mughni: (10/101); Al-Mardawi, Al-Insaaf: (21/91).

(xxvii) See: Al-Zayla'i, clarifying the facts: (2/135); Ibn Abdin, Haashiyat Ibn Abdin: (4/220); Al-Amrani, Al-Bayan: (9/365); Al-Nawawi, Rawdat Al-Talibin: (5/574); Ibn Qudamah, Al-Mughni: (10/97); Al-Mardawi, Al-Insaaf: (21/79).

(xxviii) See: Al-Bardisi, (p. 133); Al-Zuhaili, Islamic jurisprudence and its evidence: (7 / 265-266).

(xxix) This is what people used to pay a dowry to people like this woman. See: Al-Nawawi, Rawdat Al-Talibin (5/608). Muhammad Rawas Qalaji - Hamid Sadiq Quneibi Dictionary of the Language of the Jurists: (p / 436

xxx This is the saying of Imam Ahmad. See: Ibn Hubaira, Disclosure: (8/171).

(xxxi) It is the saying of Imam Abu Hanifa and Imam Shafi'i. They said: If she does not have gangs, the closest to her of mothers and aunts are considered. See: Ibn Abdeen, Ibn Abdin Haashiya: (4/273); Ibn al-Mundhir, The Supervision (ISHraaf) : (5/37); Al-Shirazi, al-Muhadhdhab (4/212); Al-Amrani, statement: (9/450); Al-Nawawi, Rawdat Al-Talibin: (5/609).

(xxxii) It is the saying of Imam Malik. See: Al-Maounah (2/756). Likewise, Ibn Al-Mundhir, Al-Ashraf (5/37). And Ibn Hubaira, disclosure: (8/172).

(xxxiii) See: Al-Amrani, Al-Bayan (9/450); Al-Nawawi, Rawdhat of the Talibin: (5/608). Ibn Qudamah, al-Sharh al-Kabir: (21/93) Ibn Abdin, a retinue of Ibn Abdin: (4/273).

(xxxiv) See: Al-Zuhaili, Islamic jurisprudence and its evidence: (7/316); Muhammad Rawas Qalaji - Hamid Sadiq Quneibi, Dictionary of the Language of the Jurists (p. 373).

(xxxv) Ibn Manzoor al-Azhari said in Tahdheeb al-Lugha: (2 / 290-291); And Ibn Manzur, Lisan Al-Arab: (13/14).

(xxxvi) Al-Samarqandi, Tuhfat Al-Faqih: (p. 285), Al-Mawsili, 3/136, Ibn Qudamah, Al-Mughni (10/143); Ibn Dwayyan, Manar As-Sabil (3/73).

(xxxvii) See: Al-Nawawi, Rawdat Al-Talibeen: (5/636, Ibn Dwayyan, Manar Al-Sabil: (3/73); Ibn Hazm, Al-Mahalla: (10/245).

(xxxviii) See: Ibn Al-Jallab, Al-Maounah 2/780, Al-Baradi, Tahdheeb Al-Moudawana 2/380.

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(xxxix) It is the doctrine of Imam Abu Hanifa and Imam Ahmad. See: Al-Mawsili, The Choice for the Explanation of Al-Mukhtar: (3/136), Ibn Qudamah, Al-Mughni 10/144, Ibn Dwayyan, Manar Al-Sabil: (3/74).

(xl) This is the view of Imam Al-Shafi'i, may God have mercy on him. See: Ibn Qudamah, Al-Mughni: (10/144). (41) See: Al-Kasani, Badaa' Al-Sanaa'i: (2/287); Khalil, a brief explanation of Khalil: (3/253); Al-Suyuti, Isotopes and Isotopes, p / 324; Al-Bahouti, Kashshaaf Al-Maskah: (5/140).

(xlii) See: Al-Bahooti, Kashshaaf Al-Maskah (5/140); Al-Samarqandi, Tuhfat al-Fuqaha ': (2/140); And Al-Suyuti, the like and the isotopes (p. 324).

(xliii) Al-Baqarah: 237.

(xliv) See: Al-Marghanani, Al-Hidaya and its Explanations: (2/438 i Al-Amiriya); Al-Samarqandi, Tuhfat al-Fuqaha '(2/140); And holding precious jewels: (2/117); Al-Nawawi, Kindergarten of the Talibin: (7/289). And Ibn Qudamah, Al-Mughni: (6/699).

(xlv) See: Al-Kasani, Badaa' Al-Sana'i (2/294); And the Indian fatwas: (1/306); The Small Commentary: (2/438); The Contract of Precious Gems 2/97, Al-Nawawi, Rawdat Al-Talibin: 7/263. Al-Bahouti, Kashshaaf Al-Maskah: (5/150).

(xlvii) See: Al-Samarqandi, Tuhfat Al-Fuqaha '(p. 284); Al-Kasani, Bada'a Al-Sana'i (2/584); Al-Mawsili, The Choice for Explanation of Al-Mukhtar: (3/136); Al-Zailai, explaining the facts: (2/138); Ibn Rushd, Bidaya al-Mujtahid (3/44); Al-Shirazi, Al-Muhadhdhab: (4/202); Al-Nawawi, Rawdat Al-Talibin: (5/587). Al-Bahouti, The Mask Scouts "Kashaf Al Qinaa': (5/165); Ibn Dwayyan, Manar As-Sabil (3/70).

(xlviii) (Compiled by Ibn Abi Shaybah in al-Musannaf: (3/520, No. 16694) The The Book of Marriage from the Secrets: (pg. 745-746); Al-Zaila'i, explaining the facts: (2/142); Ibn Abd Al-Barr, Al-Istidhkar: (16/126); Ibn Hajar in Fath Al-Bari: (9/405).

(xlviii) See: Ibn Abi Shaybah in his work: (3 / 519-520); Ibn al-Mundhir, Supervision: (5/56); Al-Jassas, Ahkam Al-Qur'an: (2/148); Al-Dabbousi, The Book of Marriage among the Secrets: (p. 747, Ibn Hazm, Al-Mahalla: (9/483); Al-Amrani, Al-Bayan: (9/401); Ibn Qudamah, Al-Mughni: (10/153).

(xlix)See: Al-Jassas, Ahkam Al-Qur'an: (2/147); Abu Zaid Al-Dabbousi, The Book of Marriage Among the Secrets (p. 737); Al-Samarqandi, Tuhfat al-Jurists: (p / 285); Al-Kasani, Bada'i Al-Sanai': (2 / 584-586); Al-Mawsili, The Choice for Explanation of Al-Mukhtar: (3/137); Al-Zayla'i, showing the facts: (2/142); Ibn Abidin, Ibn Abidin Haashiya: (4/241).

(l)See: Al-Shirazi, Al-Muhadhdhab (4/202); Al-Amrani, statement: (9/402); Al-Nawawi, Rawdat Al-Talibin: (5/587).

(li)See: Ibn Abi Musa, Al-Irshad (p / 274); Ibn Hubaira, disclosure: (8/179); Ibn Qudamah, Al-Mughni (10 / 153-155); Ibn Qudamah, al-Sharh al-Kabir: (21 / 250-253); Al-Bahooti, Kashshaaf Al-Maskah: (5/165); Ibn Dwayyan, Manar As-Sabil (3/70).

(lii)Fatwas of "Noor Ala Al-Darb", by Sheikh Ibn Baz and Ibn Al-Uthaymeen. Their fatwas were posted on their website.

(liii) See: Ibn Abi Shaybah, in his Musannaf: (3 / 520-521), Ibn Al-Mundhir, Al-Sharaf: (5/56), Ibn Hazm, Al-Mahalla: (9/482); Al-Amrani, statement: (9/401); Ibn Qudamah, Al-Mughni: (10/153).

(liv)See: Imam Malik, The Great Blog: (2/320); Ibn Al-Jallab, Al-Maounah: (2/865); Al-Baradi, Tahdheeb Al-Moudawana: (2/373); Ibn Abd Al-Barr, Al-Istidhkar: (16/130); Ibn Rushd, Bidaya al-Mujtahid: (3/44).

(lv) See: Ibn Al-Mundhir, Al-Ashraf (5/56); Al-Shirazi, Al-Muhadhdhab: (4/203); Al-Amrani, Al-Bayan: (9/401); Al-Nawawi, Rawdat Al-Talibin: (5/587)

(lvi)See: Ibn Qudamah, Al-Mughni: (10/153).

(lvii) See: Ibn Hazm, Al-Mahalla (9/482).

(lviii) See: Ibn Rushd, Bidaya al-Mujtahid: 3/45

(lix)Surat An-Nisa', verse: (20-21).

(lx)Lisan al-Arab: (10/282. See also: Al-Jassas, Ahkam Al-Qur'an: (2/148); Al-Mawardi, Tafsir al-Mawardi: (1/467); Al-Dabbousi, The Book of Marriage Among the Asrar: (p / 740); Ibn Qudamah, Al-Mughni: (10/154).

(lxi) See: Al-Tabari, Jami' al-Bayan fi Tafsir al-Qur'an (3/656); Al-Mawardi, Tafsir al-Mawardi: (1/467); Ibn Atiyah, the brief editor of Tafseer al-Aziz al-Kitab: (504/2); Al-Qurtubi, which includes the provisions of the Qur'an (6/168); Ibn Katheer, Interpretation of the Great Qur'an: (2/244).

(lxii) See: Ibn Hazm, Ansab Al-Arab Group: (p / 186); Samani, families: (4/304); Ibn al-Atheer, al-Labab fi Tahdheeb al-linsab: (2/387). See: Al-Hakim, Al-Mustadrak on the two Sahih: (5/45); Al-Nawawi,

Tahdheeb Al-Names: (2/372); The conduct of the flags of the nobility: (2/254); Al-Shawkani, Neel "having" Al-Awtar: (6/160).

(lxiii)Seen: Al-Gohari, As-Sahhah (1/349); Ibn al-Atheer, The End in Gharib al-Hadith and al-Athar: (4/175); Ibn Manzoor, Lisan Al-Arab: (12/99); Al-Waseet Lexicon: (2/788).

(lxiv) Imam Ahmad in Al-Musnad: (25/417, No. 16032); [And Saeed bin Mansour in Al-Sunan: (1/214, No. 829) [And Abu Ali in the Musnad: (10/63, No. 5699)]; [And the ruler in al-Mustadrak: (5) / 44-45, No. 6887. [And Ibn Hazm in al-Mahalla: (9/486). [And Al-Bayhaqi in Al-Sunan Al-Kubra: (7/214) [And Al-Haythami in Majma 'Al-Zawaid 4/300 [And Al-Busiri in Ittihad Al-Khayrah Al-Mahra 4/39, No. 3132].

(lxv)Ibid.

(lxvi) Al-Baqarah: 237.

(lxvii) See: Ibn Hazm, Al-Mahalla: (9/486).

(lxviii)[Narrated by Abu Dawood in Al-Maraseel: (p. 185, No. 214) [And Al-Jassa in Ahkam Al-Qur'an: (2/148)]. [And Al-Dar Qutni in Al-Sunan 3/236, No. 232) (And Ibn Hazm in Al-Mahalla: (9/486) And Al-Bayhaqi in Al-Sunan Al-Kubra: (7/256) See: Ibn Hazm Al-Mahalla: (9/486), Ibn Hajar Talisheer Al-Habeer: (3/193), Al-Albani Irwa Al-Ghaleel: (6/356).

(lxix)See: Al-Amrani, Al-Bayan: (9/403).

(lxx) [Collected by Abd al-Razzaq in al-Musannaf: (6/288, No. 10875) (And Saeed bin Mansour in Al-Sunan: (1/202), (No. 762) (And Ibn Abi Shaybah in the workbook: (3/520), No. (16695). [And al-Jisas in Ahkam al-Qur'an: (2/149)]. [And Ibn Hazm in al-Mahalla: (9/482) (See: Ibn Hajar, Summarizing Al-Habeer: (3/193), Ibn Dwayyan, Manar Al-Sabil: (3/70), Al-Albani, Irwa Al-Ghaleel: (6/356), 7/195)].

(lxxi)Hadith of al-Arba' ibn Sariya - Abu Dawud in al-Sunan: (5 / 192-193), [Al-Tirmidhi in Al-Sunan: (5/43, No. 2676) [And Ibn Majah in the Sunan: (1/30, No. 42) [And Imam Ahmad in Al-Musnad (28/373), No. 17144]. [And al-Darmi in al-Sunan: (pg. 59, No. 96) [And Ibn Hibban in al-Sahih: (1 / 178-179), [And al-Tabarani in the great dictionary: (18/245, No. 617)]. [And Al-Hakim in Al-Mustadrak: (1/288, No. 333) [And Al-Bayhaqi in Al-Sunan Al-Kubra: (10/114) [Al-Mundhiri in At-Targheeb and At-Tarheeb: (1/51, No. 61). See: Al-Badr Al-Mouneer (2/431), Ibn Hajar, Al-Habeer Summary 4/190, Al-Tirmidhi, Sahih Sunan Al-Tirmidhi: (2 / 341-342, No. 2157).

(lxxii) It was narrated by Al-Jassas in Ahkam Al-Qur'an: (2/149), Al-Kasani in Bada'a Al-Sanaa'i (2/586), Al-



Zayla'i in Explaining the Facts: (2/142), as well as Ibn Qudamah in Al-Mughni: (10/153), and Mansour Al-Bahouti In Kashshaaf Al-Qinaa: (5/166), Ibn Dwayyan in Manar Al-Sabil (3/70)

(lxxiii) And Ibn Qudamah said in Al-Mughni: See: Ibn al-Mundhir, al-Ashraf: (5/57), Ibn Qudamah, al-Mughni: (10/154).

(lxxiv) See: Ahkam al-Qur'an, for al-Jassas: (2/149), al-Dabbousi, , al-Mawsili, al-Ihtiyarah for the explanation of al-Mukhtar 3/137, al-Amrani, the statement: (9/403), Ibn Qudamah, al-Mughni: (10/154).

(lxxv) See: Al-Kasani, Badaa' Al-Sanai': (2/585).

(lxxvi) See: Al-Dabbousi, Al-Mawsili, Al-Ihtiyarah for the Explanation of Al-Mukhtar 3/137, Al-Zayla'i, showing the facts: (2/142), Ibn Qudamah, Al-Mughni: (10/154), Al-Bahouti, Kashshaaf Al-Qanaa : (5/166), Ibn Dwayyan, Manar As-Sabil: (3/71).

(lxxvii) See: Al-Jassas, Ahkam Al-Qur'an: (2/149).

(lxxviii) Surat Al-Baqarah: 237.

(lxxix) See: Al-Zayla'i, showing the facts: (2/142), Ibn Qudamah, Al-Mughni: (10/154), Al-Bahouti, Kashshaf Al-Qanaa: (5/166), Ibn Dwayyan, Manar Al-Sabeel (3/71).

(lxxx) Surat An-Nisa ': 21.

(lxxxi) ()Ibn Faris Mujaamayyat al-Lughah said: (4/508) Ibn Manzur said in Al-Lisan: (10/282). See: Al-Gohari, As-Sahhah (5/1954).

(lxxxii) See: Al-Tabari, Jami al-Bayan fi Tafsir al-Qur'an (3/656), al-Mawardi, Tafseer al-Mawardi (1/467), Ibn Attiyah, al-Qurtubi, al-Jami 'al-Ahkam al-Quran 6/168), Ibn Katheer, Interpretation of the Great Qur'an: (2/244).

(lxxxiii) Ibn al-Atheer said in the end in Gharib al-Hadith: (3/456)

(lxxxiv) See: Ahkam Al-Qur'an, for Al-Jassas (2/148), Al-Dabbousi, The Book of Marriage from the Secrets (p. 741), Ibn Qudamah, Al-Mughni (10/154), Al-Bahouti, Kashshaaf Al-Qanaa: (5/166), Ibn Dwayyan Manar As-Sabil: (3/71)

(lxxxv) Narrated by Ibn Abi Shaybah in al-Musannaf 3/520, And Ibn Hazm in Al-Mahalla 9/484 And Al-Bayhaqi in Al-Sunan Al-Kubra 7/255 . See: Ibn Hajar, Summarizing Al-Habeer 3/192.

(lxxxvi) See: Al-Bayhaqi, Al-Sunan Al-Kubra 7/255, and also Ibn Qudamah, Al-Mughni: 10/154.

(lxxxvii) [Collected by Imam Al-Shafi'i in Al-Musnad, p. 298. [And Abd al-Razzaq in al-Musannaf 6/290, No. 10882, [And Saeed bin Mansour in Al-Sunan 1/204, No. 772 . [And Ibn Abi Shaybah in al-Musannaf 3/520, No. 16706, [And Ibn Hazm in al-Mahalla 9/484 . [And al-Bayhaqi in al-Sunan al-Kubra 7/254 .

(lxxxviii) See: Ibn Qudamah, Al-Mughni: 10/154.

(lxxxix) [It was included in Al-Mudawwana 2/323 [And Abd al-Razzaq in al-Musannaf 6/291, No. 10886, [And Saeed bin Mansour in al-Sunan 1/203, No. 769, [And Ibn Abi Shaybah in al-Musannaf 3/521 Book No. 16707, [And Al-Bayhaqi in Al-Sunan Al-Kubra 7/255).

(xc) See: Ibn Qudamah, Al-Mughni: (10/153).

(xci) See: Al-Amrani, Al-Bayan: (9/403).

(xcii) Surat An-Nisa ': 24.

(xciii) I said: It is mentioned here that khulwah is permissible for someone other than her husband, unlike the other things mentioned. It is not permissible for incest, and it is only permissible for the husband.

(xciv) See: Ibn Uthaymeen Al-Sharh Al-Mumti ', on Zaad Al-Mustaqni': (12/293).

(xcv) See: Ibn Rushd, Bidaya al-Mujtahid: (3/45).

(xcvi) See: Milestones of Fundamentals of Jurisprudence among the Sunnis and the Community, by Dr. Muhammad Al-Jizani, p. 180

(xcvii) See: Imam Malik, Al-Mudawwana Al-Kubra 2/320, Al-Maounah 2/865, Ibn Abd Al-Barr, Al-Istidhkar 16/126, Al-Bayhaqi, Al-Sunan Al-Kubra, 7/256.

(xcviii) See: Al-Wajeez Explaining the Personal Status Law and its Amendments, Ahmad Al-Kubaisi, p / 91,92.

(xcix) See: Al-Sherbini, Mughni Al-Muhtaj, (3/228), Al-Bhouti, Kashshaaf Al-Qinaa, (5/156), and Ibn Arafa, Haashiyat Al-Desouki, (2/313).

(c) Surah Al-Baqarah: 236.

(ci) See: Al-Kasani, Badaa' Al-Sanai', 2/291; Al-Zailai, clarification of the facts, 2/140; Al-Haddadi, The Luminous Jewel, 4/25; Ibn Nujim, Al-Bahr Ra'iq, 3/165)

(cii) See: Al-Barada'i, Tahdheeb Al-Moudawwana, 1/410; Ibn Jazi, Laws of Jurisprudence, p.

(ciii) Surah Al-Baqarah: 237.

(civ) See: Al-Mawardi, Al-Hawi Al-Kabir, 9/485; Shirazi, al-Muhadhdhab, 2/60.

(cv) See: Ibn Qudamah, Al-Mughni, 6/269, 7/183,185,191; Merger, equity, 8 / 299,300; Al-Bahouti, Kashshaaf Al-Maskah, 5/151.

(cvi) See: Ibn Qudamah, Al-Mughni, 7/171.

(cvii) See: Ibn Qudamah, Al-Mughni, 7/171.

(cviii) Surat Al-Baqarah Verse: 236.

(cix) Explanation of the Personal Status Law, Judge Muhammad Hasan Kashkool, and Judge Abbas al-Saadi, p. 98.

(cx) See: Al-Talqani, Al-Muheet in Linguistic: (1/450); Dictionary of Language Standards: (5/293).

(cxi) Al-Sherbini, Mughni Al-Muhtaj: 3/241

(cxii) Surat Al-Baqarah from the verse: 236.  
 (cxiii) Al-Tabarani included it in his Tafsir, (2/544), and he mentioned similarly on the authority of Al-Zuhri, Al-Sha'bi and Shearh Al-Qadhi, and it was authenticated by Al-Albani in Al-Irwa (6/361).  
 (cxiv) See: the following sources in the dispute.  
 (cxv) See: Ibn Qudamah, Al-Mughni, (10/140).  
 (cxvi) See: Ibn Qudamah, Al-Mughni, (10/140); Al-Mirdawi, Al-Insaaf, (8/302).  
 (cxvii) See: Choices (p / 237,238); Mirdawi, Equity, (8/302); Fatwas (32/27).  
 (cxviii) See: Al-Mahalla, (10/245).  
 (cxix) See: Al-Tabari, Jami` al-Bayan in Interpretation of the Qur'an: ((5/547).  
  
 (cxx) See: Al-Tabari, Jami` al-Bayan in Interpretation of the Qur'an: (, (5/546); Musannaf Abdul-Razzaq, (7/68); and Al-Albani corrected the narration on him in Al-Irwa (6/361).  
 (cxxi) See: Al-Shirazi, Al-Muhadhdhab, (2/63); Al-Sherbiny, Mughni Al-Muhtaj, (3/241).  
 (cxxii) See: Al-Mardawi, Al-Insaaf, (8/302)  
 (cxxiii) See: Al-Kasani, Badaa` Al-Sanai`, (2/302); Ibn al-Hamam, Fath al-Qadeer, (3 / 335,326).  
 (cxxiv) See: Al-Shirazi and Al-Muhadhdhab, (2/63).  
 (cxxv) See: Ibn Qudamah, Al-Mughni, (10 / 139,140); Al-Mirdawi, Al-Insaaf, (8/302).  
 (cxxvi) See: Ibn Abd al-Barr, Al-Istidhkar, (17/281); Al-Baghi, The Picker, (4/88); The Crown and the Wreath, (5/411).  
 (cxxvii) Surat Al-Baqarah: 241.  
 (cxxviii) )) See: Al-Tabari, Jami` al-Bayan in Interpretation of the Qur'an: (, (5/547); Al-Kasani, Badaa` Al-Sanai`, (2/302).  
 (cxxix) See: Al-Tabari, Jami` al-Bayan in Interpretation of the Qur'an: ((5/547)  
 (cxxx) See: Al-Kasani, Badaa` Al-Sanai`, (2/302).  
 (cxxxii) Surat Al-Baqarah: From Verse 2:  
  
 (cxxxiii) See: Al-Kasani, Bada`a Al-San`a`, (2/302).  
 (cxxxiv) See: Ibn Abd al-Barr, Al-Istidhkar, (17/282).  
 (cxxxv) Surat Al-Baqarah two verses: 236-237.  
 (cxxxvi) See: Ibn Qudamah, Al-Mughni, (10/140).  
 (cxxxvii) Surat Al-Baqarah: From Verse 241.  
  
 (cxxxviii) See: Al-Tabari, Jami` al-Bayan in Interpretation of the Qur'an: ((5/548).  
 (cxxxix) See: Al-Kasani, Bada`a Al-San`a`, (2/302).  
 (cxli) Al-Baqarah: 236.  
 (cxlii) Al-Baqarah: From Verse 241  
 (cxliii) Al-Ahzab Verse 28.

(cxliii) The Polite "Almuhathab" , (2/63); Fatwas (32/27).  
 (cxliv) See: Al-Fatawa (32/27).  
 (cxlv) Al-Baqarah Verse 237  
 (cxlvi) Al-Baqarah Verse 241.  
 (cxlvii) See: Al-Tabari, Jami` al-Bayan in Interpretation of the Qur'an: ((5/548).  
 (cxlviii) Al-Baqarah Verse 241.  
 (cxlix) Al-Kasani mentioned it in Bada`a` Al-San`a`: (2/304)  
 (cl) See: Al-Kasani, Bada`a Al-Sanai`, (2/304); Show the facts (2/140); Al-Bahr Al-Ra`iq, (3/158).  
 (cli) Al-Baqarah Verse: 236.  
 (clii) See: Al-Kasani, Badaa` Al-Sanai`, (2/304).  
 (cliii) See: Laws of Jurisprudence, (p. 159); Al-Jami` Al-Ahkam Al-Qur'an, (3/202).  
 (cliv) Al-Baqarah Verse: 236.  
 (clv) Al-Thakheera "Ammunition, (4/450). .  
 (clvi) Al-Baqarah Verse: 236.  
 (clvii) Al-Baqarah Verse: 236.  
 (clviii) See: al-Muhadhdhab in the jurisprudence of Imam al-Shafi'i, (2/476); Rawthat Al-Talibeen (7/322,323); Mughni al-Muhtaj, (3/242).  
  
 (clix) See: Ibn Qudamah, Al-Mughni, Ibn Qudamah, (7/242,243); Al-Mardawi, Equity, Al-Mardawi, (8 / 300,301).  
 (clx) Al-Baqarah Verse: 236.  
  
 clxi Explanation of the Personal Status Law, Judge Muhammad Hasan Kashkool, and Judge Abbas al-Saadi, p. 98.  
 clxii See: Al-Hidaya, 3/373; Desouki's Entourage, 2 / 745-746; Mughni Al-Muhtaj, 3/518; Explanation of the end of the wills, 5/5 591; Al-Ijma ', Ibn al-Mundhir, p / 86; Encyclopedia of consensus, Abu Jeeb, 2/828.  
 (clxiii) Divorce: to lift the marriage record on the spot or money with a specific wording. See: Enlightenment of Eyes, Al-Tamratshi, 3/341.  
 (clxiv) Fiqh Encyclopedia, 32/131.  
 (clxv) See: Al-Sharh Al-Sagheer, Al-Dardeer, 2/429.  
 (clxvi) See: Al-Sharh Al-Sagheer, Al-Dardeer, 2 / 402-403.  
 (clxvii) See: Tanweer Al-Eysar, Al-Tamratshi, 3 / 429-441.  
 (clxviii) See: Al-Ijma`, Ibn al-Mundhir, (p. 397); Al-Kasani, Bada'i Al-Sanea ', (3/191); Fiqh Laws, (p / 156); Polite, (2/142); Ibn Qudamah, al-Mughni, (8 / 78,80).  
 (clxix) See: Ibn Abdeen's retinue, 3/144; Explanation of the law, d. Soapy, 1/278; Desouki's Entourage, 2/735; Al-Bahouti, Kashshaaf Al-Maska: 5/482).  
 (clxx) See: Ibn Qudamah, Al-Mughni, (8/80).  
 (clxxi) See: Al-Mabsoot, (6/16); Al-Kasani, Bada'i Al-Sanea ', (3/191); Ibn Najim, Al-Bahr Al-Ra`iq, (3/165).

(clxxii) See: Ibn Jazy, Al-Qawamun Fiqh, (p. 156); The Talents of Galilee, (4/141); A brief explanation of Khalil, (4 / 136,137).

(clxxiii) See: Al-Shirazi and Al-Muhadhdhab, (2/142); Mughni al-Muhtaj (3/384); The End of the Needy, (7/128).

(clxxiv) See: Ibn Qudamah, Al-Mughni, (8/80); Al-Bahouti, The Mask Alqitaa Scouts, (5/412,411).

(clxxv) See: El-Sherbiny, Mughni Al-Muhtaj (3/505).

(clxxvi) Surah Al-Baqarah: 228.

(clxxvii) See: Al-Qadouri, Al-Tjred: (10/5302).

(clxxviii) See: Ibn Qudamah, Al-Mughni: (8/80).

(clxxix) See: El-Sherbiny, Mughni Al-Muhtaj (3/225).

(clxxx) Seen: Al-Qudduri, Al-Tjred: (10/5302); Desouki's Entourage, 2/735; Al-Bahouti, 5/482.

(clxxxi) See: Ibn Qudamah, Al-Mughni, Ibn Qudamah, (8/99).

(clxxxii) See: Al-Kasani, Badaa' Al-Sana'i, 3/191.

(clxxxiii) Al-Kasani, Badaa' al-Sanay', 3/191.

(clxxxiv) Surah Al-Ahzab: 49.

(clxxxv) Seen: Mother, 5/197; Ahkam al-Qur'an by al-Shafi'i (1/251)

(clxxxvi) See: Ibn Qudamah, Al-Mughni: (8/80).

(clxxxvii) See: Ibn Qudamah, Al-Mughni: (8/80).

(clxxxviii) Surah Al-Ahzab: 49.

(clxxxix) Al-Bayhaqi included it in Al-Sunan Al-Kubra, 7/255,

(cxc) See: Ibn Qudamah, Al-Mughni, Ibn Qudama, (8/99).

(cxci) See: Al-Shirazi, Al-Muhadhdhab, 2/142.

(cxcii) Surah Al-Ahzab: 49.

(cxciii) See See: Al-Kasani, Badaa' Al-Sana'i, 4/16.

(cxciv) See: Al-Jassa, Ahkam Al-Qur'an: (5/355), and Ibn Qudamah, Al-Mughni: (9/289).

(cxcv) Al-Desouki's footnote 515, commentary by al-Khurshi 4/192.

(cxcvi) See: See: Al-Shirazi, al-Muhadhdhab 2/164.

(cxcvii) See: Ibn Qudamah, Al-Mughni 9/288.

(cxcviii) See: Al-Mardawi, Al-Insaaf 9/361.

(cxcix) See Al-Mardawi, Al-Insaaf, 9/361.

(cc) Al-Jami 'Ahkam Al-Qur'an, Al-Qurtubi, 5/75.

(cci) Surat An-Nisa ': From verse 12

(ccii) See: Al-Ijma', Ibn Al-Mundhir, p. 397; Ranks of Consensus, Ibn Hazm, p / 103; Al-Kasani, Bada'i Al-Sanea ', Al-Kasani, 3/218; Al-Jami 'Ahkam Al-Qur'an, Al-Qurtubi, 3/182; Ibn Qudamah, Al-Mughni, Ibn Qudama, 6/268; Mughni al-Muhtaj, al-Sherbiny, 3/294.

(cciii) Al-Durr Al-Mukhtar, Al-Hasakfi, Dar Al-Fikr - Beirut, 1386, (3/384). Abu al-Hasan Ali bin Abd al-Salam al-Taswali. The footnote of al-Mukhtar's response to al-Durr al-Mukhtar, Explanation of Tanweer al-Misar Jurisprudence of Abu Hanifa, Ibn Abidin, Mukhtasar Khalil, Muhammad ibn Yusuf bin Abi al-Qasim al-Abdari Abu Abdullah.

(cciv) See: Al-Shirazi, Al-Muhadhdhab: (2/25); Al-Nawawi, Kindergarten of the Talibin: (8/72). El-Sherbiny, Mughni Al-Muhtaj: (3/294)

(ccv) Al-Mabsut Al-Sarkhi 6/155; Al-Kasani, Bada'i Al-Sanea ', Al-Kasani, 3/219

(ccvi) Al-Kasani, Bada'i Al-Sanea ', Al-Kasani, 3 / 218-219.

(ccvii) Al-Kasani, Badaa' al-San'a', Al-Kasani, 3/219.

(ccviii) Al-Mabsut, Al-Sarkhasi, 6/155.

(ccix) See: Ibn Qudamah, Al-Mughni, Ibn Qudama, 6/395.

(ccx) See: Ibn Qudamah, Al-Mughni, Ibn Qudama, 6/395.

(ccxi) See: Rawdat Al-Talibin, Al-Nawawi, 8/72; Mughni al-Muhtaj, al-Sherbiny, 3/294.

(ccxii) Bidaya al-Mujtahid, Ibn Rushd, 3 / 102-103.

(ccxiii) See: Rawdat Al-Talibin, Al-Nawawi, 8/72.

(ccxiv) See: Ibn Qudamah, Al-Mughni, Ibn Qudama, 6/395.

(ccxv) Iraqi Court of Cassation Decision No. 2024 / Sharia / 70 of 3/3/1976, Judicial Bulletin, Issue 1, Year Two, p. 79.

(ccxvi) Iraqi Court of Cassation Decision, No. 1856 / Personal / 78 / on 10/17/1978, Judicial Rulings Group, First Issue, Tenth Year, p. 55.

(ccxvii) Iraqi Court of Cassation Decision, No. 86 / Sharia / 66 of 3/15/1967, Legal Principles in the Court of Cassation, prepared by Ibrahim Al-Mashahidi, 1989, Asaad Press, Baghdad, p. 170.

(ccxviii) Quoted from Baqir Khalil al-Khalili, The Applications of the Amended Personal Status Law, Al-Irshad Press, Baghdad, 1964, p. 156.

(ccxix) Iraqi Court of Cassation Decision No. 255 / Extended First / 1996 of 01/22/1967, unpublished.

(ccxx) Article (11) of the Egyptian inheritance law, and Article (116) of the Syrian Personal Status Law corresponds to it. See the opposite of the text of Article (35/2) of the Iraqi Personal Status Law.

(ccxxi) Egyptian Court of Cassation Decision No. (27) of 1/7/1976, citing Dr. Abdel-Wadoud Yahya, The Scientific Encyclopedia of Court Judgments, Part 2, Dar Al-Nahda Al-Arabiya, Egypt, 1984, pp. 139-140.

(ccxxii) The Egyptian Court of Cassation Decision No.(146) of 1/7/1976, quoted by Dr. Abdel-Wadoud Yahya, the same reference, pp. 39-140.

(ccxxiii) That is, the divorce that is not decided except for limited reasons specified by French law.

(ccxxiv) See Dr. Mustafa Ibrahim Al-Zalami, previous reference, pp. 321-322.

(ccxxv) 225 Article 229 of the French Civil Code. Taken from the International Information Network (the Internet) via the following website: - [www.dalloz.org](http://www.dalloz.org).

(ccxxvi) Article (230) of the French Civil Code. Taken from the International Information Network (the Internet) via the following website: - [www.dalloz.org](http://www.dalloz.org)

(ccxxvii) Taken from the International Information Network (the Internet) via the following website: - [www.dalloz.org](http://www.dalloz.org)

(ccxxviii) Al-Babarti, Al-Taya Sharh Al-Hidayah: 6/13, Al-Zubaidi, Al-Jawhara Al-Naira: 4/21.

(ccxxix) Al-Khurshi, a brief explanation of Khalil: 4/82

(ccxxx) Al-Shirazi, al-Muhadhdhab 2/109.

(ccxxxi) Ibn al-Hamam, Fath al-Qadeer .

(ccxxxii) Al-Mardawi, Al-Insaf, 2/100, Al-Bahouti, Al-Maskah: 5/249.

(ccxxxiii) Ibn al-Hamam, Fatah al-Qadeer

(ccxxxiv) Ibn Najim, Al-Bahr Al-Ra'iq 2 / 12-13.

(ccxxxv) Including: Al-Zayla'i, explaining the facts, Part 2/144, Al-Fataawa Al-Hindi 1/306; Al-majma', Al-Aghar in Explaining Al-Bahr Junction 1/516.

(ccxxxvi) Ibn Abidin, Responding to Mukhtar, 3/120.

(ccxxxvii) Almuntaqa', 4/85; Extremely Willing, 2/102.

(ccxxxviii) Sahnoun, Al-Mudawwana Al-Kubra, (5/35).

(ccxxxix) Ibn Qudamah, Al-Mughni, (6/269).

(ccxli) Al-Bahouti, Kashshaaf Al-qina', (4/482).

(ccxlii) Al Rawda Al Bahia, 2/326; The Laws of Islam, 3/27.

(ccxlili) Ibn Hazm, Al-Mahalla, (10/224).

(ccxliv) Al-Shirazi, Al-Muhadhdhab, (2/25).