

## Divorce Rule and Ways to Prevent it Maqasid Study

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### Abstract

This research paper discusses the issue of extravagance in divorce and the seriousness of this matter, the position of Islamic law on it, and the means that have been legislated in order to eliminate and reduce this phenomenon in contemporary Islamic societies.

It is known that divorce is legitimate in terms of origin, which is the most hated halal, and is plagued by the five provisions, and Sharia has developed glue of preventive measures against excessive divorce, and if Muslims took into account these measures, divorce rates would have decreased to the extreme, yes, we cannot eliminate or prevent.

**Keywords:** Judgment, Measures, Protective, Extravagance, Divorce

### Introduction

Praise be to Allah, Lord of the Worlds, and the consequence for the pious, and prayers and peace be upon the Holy Prophet, I testify that there is no god to Allah alone who has no partner, and I testify that Muhammad is his servant and messenger, may God's prayers and blessings be upon him and his family and companions, and peace be upon him a lot, and then after.

Divorce and its permissibility in Islamic law are among the suspicions raised in the past and in the face of Islamic law, on the grounds that this law is unjust and biased against women in favour of men and that by permitting divorce it does not preserve the family, does not respect women's rights and discriminates between them and men in favour of men.

### **Search Problem**

The problem of research: The problem of research lies in trying to reach a statement of the reasons for divorce and the factors affecting it, and the measures that can be taken by the authorities concerned with this matter; and the statement of the risks of divorce, which leads in many cases to the disintegration of the Muslim family and the spread of the phenomenon of divorce that threatens many Muslim countries, and negatively affects economic development in Islamic countries.

### **Research Questions**

The research problem results in several questions that we try to answer through that study, the most important of which are:

1. What is meant by divorce?
2. What are the reasons that lead to divorce?
3. What are the means by which divorce can be curbed?
4. How can the legal means to reduce divorce be achieved?

### **Research Objectives:**

The research aims to

1. Explaining the importance of cooperation between family members
2. Explain the risks of divorce spreading
3. Statement of means of dealing with the dispute between spouses
4. Emphasizing the role of society in eliminating the phenomenon of divorce

### **Research Methodology**

The research depends on the inductive approach to collect and analyze data, as well as the descriptive approach by describing the phenomenon and trying to propose solutions to this phenomenon by explaining the causes of divorce and ways to prevent it from a legal perspective.

### **Research Plan**

This brief study will not be exposed to all types of division, including divorce and the provisions resulting from it, but will be presented in two sections after the introduction, and the introduction, as follows:

Introduction: It deals with the definition of divorce in language, terminology, and its ruling.

The first topic: the purpose of Islamic law from the legislation of divorce.

The second topic: preventive measures against falling into divorce.

Conclusion: It contains the findings and recommendations.

**Introduction:** It deals with the definition of divorce in language, terminology, and its ruling.

Divorce language: solution and lifting the restriction, which is the name of the source of divorce, and uses the use of the source, and its origin: divorced woman divorced, she is divorced without E, and narrated by distraction (divorce) if she is divorced from her husband, and synonymous with divorce, it is said: divorced and divorced in the sense of discharged, and it was said: divorce for a woman if divorced, and divorce for others if discharged, it is said: divorced the woman, and divorced the prisoner (Fayoumi, 2/376), and the fuqaha' adopted

this difference, they said: The word divorce is explicit, and the word divorce is a metaphor (Kuwait Encyclopedia 5/29)

### **Divorce Idiomatically**

1. The Hanafi defined it as "lifting the restriction of marriage immediately or immediately with a special word" (Ibn 'Abidin, 3/227).
2. The Malikis defined it as "the solution of infallibility between spouses with specific words" (al-Adawi, 2/79).
3. The Shaafa'is defined it as "the solution of the marriage contract with the word divorce and the like" (al-Ramli, 6/433, an-Nawawi 6/423).
4. The Hanbalis defined it as "a solution under marriage or part of it" (al-Bahooti, 3/175, Ibn Qudamah, 2/4).

Divorce is in the custom of the jurists: lifting the restriction of marriage immediately or in the future with a special word or its substitute (Ibn Najim, 1/30).

He said in al-Bada'ii: The corner of divorce is the word that made an indication of the meaning of divorce language, which is abandonment, sending and lifting the restriction in the explicit and cutting the link and the like in metonymy or Shariah, which is the removal of the local solution in the two types or what takes the place of the word (Al-Kasani; 3/88)

### **- Divorce Ruling and its Legality**

- The fuqaha' agreed on the origin of the legality of divorce, and they cited evidence for that, including: The Almighty says: "

"... الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ" [Al baqara: 229]

And the Almighty says:

"وَاتَّقُوا اللَّهَ رَبَّكُمْ وَأَخْضُوا الْعِدَّةَ يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ" [Al talaq: 1]

The Sunnah of the Prophet (peace and blessings of Allaah be upon him) also indicates his legitimacy, as the Prophet divorced Hafsa bint 'Umar (may Allaah be pleased with him) and then revised it (Abu Dawood 2283, Ibn Maajah, 2016), divorced his companions and did not deny them.

Until this day, the Muslims of the Messenger of Allah (may Allah's peace and blessings be upon him) unanimously agreed on the legality of divorce in terms of origin, and some of them said that it is permissible, and some of them said that it is permissible and that it is permissible for certain reasons.

It is more likely that divorce is plagued by the five rulings, as it may be permissible, it may be obligatory or delegated, and it may be haraam or abhorrent, and this is like marriage, whether equally (Ibn 'Abidin; 3/227, Ibn Qudamah; 7/363, al-Sherbini; 3/279).

### **The First Topic: the purpose of Islamic law from the legislation of divorce**

Many non-Muslims, and those who followed their example from the secularists, the Westerners and the defeated denounce the Islamic law that it legitimized divorce, and this is considered a loss of the right of women, and the bullying of the man over her, as he enjoys it as he wants, and if he gets bored or satisfied with it, he divorces her.

Rather, the foolish reached them or some of them to be proud that the Sharia to which he belongs or the law to which he is invoked criminalizes or prohibits divorce, and thinks that this is a cause for pride and condescension over others!!

It is unfair to women because it oppresses them and forces them to live with those they do not love, but rather hate and hate them the most, and they have no way but to look for a

friend in the haram by which she desecrates her offer and the offer of her husband, her family and her clan, or kills her husband until she rests from him, or commits suicide until she gets rid of this eternal and compulsive relationship from which there is no escape.

It is unfair for a man to live with a woman he does not love and does not love him, and he may not forgive her or forgive him, so he searches for this lust in the forbidden, or kills her or commits suicide, and this is the civilization that they promote among us and want us to live for her and for her!

When the Islamic Sharia legalized divorce, it did not urge people to do so, but made it the most hateful thing that is permissible to God, and made it an exception and not an asset, and made it in the hands of the man, because he is the one who pays the dowry, and he is the one who bears the costs of divorce if it occurs, and it made women all their financial and moral rights, and gave them the opportunity to start their life with another man who may find her happiness in this world and the hereafter with him.

His Eminence Sheikh Sayyid quoted a former in the jurisprudence of the Sunnah from Ibn Sina that he said in the Book of Healing: There should be a way to the division, and not to block it in every way, because resolving the reasons for reaching the division completely requires aspects of damage and defect, including: that of natures that are not familiar with some natures, the more he strives to combine them, the greater the evil, and the prophecy (i.e. disagreement) and the disturbed of living.

Including: that people from the right (i.e. injured) by an incompetent husband, nor good doctrines in the ten, or hateful recovered by nature, so this becomes a call to the desire for others, as lust is natural, perhaps this led to faces of corruption, and perhaps the married do not cooperate on the offspring, if he replaced another couple cooperated in it, it must be paradoxically a way, but it must be aggravated in it, (i.e. does not resort to divorce until after exhausting all means to avoid it) (previous; 2/242)

### **Sayyid Qutb (may Allah have mercy on him) said in the shadows**

Islam does not rush to the sacred bond of marriage and breaks it at first sight, and at the first sign of disagreement. He pulls on this bond so hard, letting it slip away only after trying and despairing.

He cheers men:

”وَيَجْعَلُ اللَّهُ فِيهِ خَيْرًا كَثِيرًا وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا“

[An-Nisa: 19]

He tends them to wait and be patient even in the case of hatred, and opens for them that unknown window: ”فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا“

They do not know that there is good in these hated women, and that God spares this good for them. They cannot get away with it. If not, they should hold on to it and console it! There is nothing more eloquent than this in the timidity and excitement of the emotional turn, and the taming of hatred and extinguishing its evil.

If it goes beyond love and hate to disgust and repulsion, divorce is not the first thought that Islam gives it. Rather, there must be an attempt by others, and a reconciliation that the good people try:

” وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ” [An-Nisa: 35] . .

If you do not find such mediation, then the matter is serious, and there is something that this life is not suitable for, and there is no decision for it. Holding the marriage on this situation is

a failed attempt, increased by pressure failure, and it is wise to recognize reality, and end this life on the hatred of Islam, the most hated halal to God divorce, if he wants to divorce, it is not permissible at every moment divorce. But the Sunnah is to be in purity in which no intercourse has occurred. This postpones the breaking of the knot for a period after the attitude of anger and emotion. During this period, souls may change, hearts may be recognized, and God reconciles between the disputants, so divorce does not occur! Then after that the period of the kit. Three readings for those who menstruate and give birth. And three months for the ice and the small. And the gestation period for pregnant women. There is room for repetition if hearts beat with affection and a desire to resume what has been broken from the marital cord.

However, all these attempts do not negate the fact that there is a separation that is taking place, and situations that the Sharia must face in a realistic way, legislate it, regulate its conditions, and address its effects. In this were those detailed precise judgments, which indicate the realism of this religion in its treatment of life, while always pushing it forward. He always lifted it up to heaven (Qutb, 6/3597).

**It says in the book Bayan al-Nas from Al-Azhar publications: Among the aspects of wisdom in determining the principle of divorce**

1- The wife may be sterile and the man wants offspring, and asking for offspring is legitimate and is the first goal of marriage, and the wife does not accept to join another woman. Or he cannot support two wives, and similarly the husband may have a defect that prevents the existence of offspring, and she longs to satisfy the maternal instinct, so there is no way but divorce.

2 One of them may have an infectious disease that turns life into trouble and pain, so the treatment is divorce.

3 It may be that the husband of the bad ten rough treatment does not work with him to advise, and it may be so, and there is no escape from separation. There may be other reasons from him or her, so divorce is a must.

In fact, it is determined that divorce has disadvantages next to its benefits, as it has an impact on women if they do not have a source of livelihood on which to depend and they fear that they will take dishonest paths, and it has an impact on the man to bear its financial and psychological consequences if he does not find someone to live with if the divorce is because of it, and children who do not find proper care are affected by it in the care of the parents, either they live under the care of their stepfather or under the care of their stepmother, or they are displaced and not They find what protects them from deviation, and all of this is harmful to society. For this reason, Islam has kept it minimalistic and ultimately trying to reconcile. (Falcon;6|256)

**The second topic: preventive measures against falling into divorce.**

We talked in the previous section about the fact that divorce is legitimate in terms of origin, which is the most hated halal, and is plagued by the five provisions, and Sharia has developed glue of preventive measures against excessive divorce, and if Muslims took into account these measures, divorce rates would have decreased to the extreme, yes we can not eliminate or prevent

**First: Reform women before divorce**

Allah says:

"الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُورَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ فَإِنِ أَطَعْنَكُمْ فَلَا تَتَّبِعُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا \* وَإِنِ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا" [An-Nisa: 34-35].

This verse talked about the types of women, after it proved the guardianship of the man, which means responsibility and protection, and not oppression and enslavement as those who do not understand think, as the man is responsible for his wife who obeys them, which feeds, cloths, dwells and spends on them with favor.

The first type: the righteous women, they are the keepers of the unseen with what God has preserved, and these do not need to preach, abandon or beat, and they are the obedient Qantat of their Lord and their husbands, the keepers of the state of backbiting themselves, their chastity, the money of their husbands and children, and the state of solitude with the husband, and in the presence of the husband I preserve, and saying: What God has preserved, that is, because of God's command to preserve it, God ordered them to stab their husbands and keep them in exchange for what God has preserved for them of the rights before husbands of dowry, alimony and cohabitation with favor, that is, this is so. God promised them the great reward for keeping the unseen, and promised them severe punishment for neglecting it. (Al-Zuhaili; 5/55; Al-Andalusi; 2/48)

The second type: disobedient women: They are those who think or know from them to rise above the boundaries of marriage, its rights and duties, and these husbands follow with them the following four stages:

1- Preaching and guidance if it affects them:

That the man says to the wife: Fear God, for I really have you, and return from what you are, and know that my obedience is imposed on you and so on, including intimidation of God, threat of God's punishment, and warning of bad consequence and fate and deprivation of the blessing of a happy married life. This is a warning and a reminder that may turn her away from his discord.

2 – Abandonment and abandonment in the dormitory (shrine):

It is a metaphor for not having sexual intercourse, or not sleeping with her in the same bed, and it is not permissible to abandon speech for more than three days. This is the most important thing about a woman and makes her see what she does and think about her doing. Ibn 'Abbas said: If she obeys him in the dormitory, he cannot beat her.

3- Non-severe beating:

That is, the harmful severe injury, such as lightly beating the hand on the shoulder three times, or with a siwak or a light stick, because it is intended only for goodness. (Al-Zuhaili, 5/56)

**Second: Waiting, thinking, counseling and istikhara before divorce**

If the previous steps did not work, then the woman is not one of the righteous women who keep the unseen, and did not listen to advice and intimidation, and the abandonment only increased her stubbornness and arrogance, nor the beating to insistence and arrogance, then the husband should wait and think long about divorce.

The first thing the husband does is review himself, and accuse her of perhaps his cruel treatment, and his apparent toughness, and not giving women their rights is the reason for their stubbornness, as women are not the cause of divorce in all cases, as the man may be

the one who forced her to it, and then the Holy Qur'an warned of harming women until they resort to khul' and leave their material rights in order to get rid of this harsh life.

Allah Almighty says:

" يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرْتُوا النِّسَاءَ كَرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْنَهُنَّ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ وَعَايِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا" [An-Nisa: 19]

And the Almighty says:

" أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولَاتٍ حَمْلًا فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أَجُورَهُنَّ وَأَتَمِّرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِن تَعَاَسَرْتُمْ فَمَسْرُوعٌ لَهُ الْآخَرَى " [ALTalaq: 6]

If a man is consulted and consulted, and he is sure that divorce is inevitable, and he holds himself accountable impartially, objectively, impartially and faithfully to God who knows the secret and conceals it, and finds that the woman is the tyrant prostitute and that he did not fall short in her right, or that he cannot bear to live with her even if she is not unjust to him, then he must divorce the legitimate Sunni divorce, and that he divorces the woman in purification in which he did not cohabit with her, so he does not divorce her while she is menstruating or a woman, and he does not divorce her in the purification of her partner in it. All of this is a heretical divorce that is not permitted by Islamic law.

### Third: Ruling on Heretical Divorce

What is meant by bid'i divorce is the divorce of a woman in the event of menstruation or postpartum or the purification of her partner in it and it is not adopted for him whether she is pregnant or not.

The majority of jurists have agreed on the occurrence of heretical divorce, with their agreement that sin occurs in it on the absolute for violating the Sunnah. If he divorces his wife when she is menstruating, he must review her, in order to remove the sin of the Hanafis in the most correct way for them, and al-Qudduri said from the Hanafi: Going back is mustahabb and not obligatory, and al-Shaafa'i went on to say that reviewing the one who divorced her is heretical Sunnah, and the Hanbalis expressed that it is mustahabb (Ibn 'Abidin, 3/233)

The Malikis went on to divide al-Bada'i into: haraam and makrooh, haraam: what happened during menstruation or postpartum from divorce at all, and makrooh: what happened in other than menstruation and postpartum, as if he had done it in her purification in which he had intercourse with her, and on this the divorced person during menstruation and postpartum is forced to return in order to lift the sanctity, and no one else is forced to return, even if he is heretical (Al-Desouki, 2/163)

Ibn Taymiyyah and his student Ibn al-Qayyim - may God have mercy on them - have a valid opinion on this issue, as they believe that the forbidden heretical divorce does not occur, so how does God forbid something and then rely on it after that, and they were followed by some contemporary jurists such as the scholar Dr. Yusuf al-Qaradawi, may God have mercy on him.

Ibn Taymiyyah (may Allah have mercy on him) said: A forbidden divorce is not subject to the command of Allah and His Messenger, for it is rewarded. He ordered him to delay the divorce until the second purification so that he could intercede in the first purification. If he divorced her in it, it was not permissible to divorce her until before intercourse, so he could not order her to hold her to him except by increasing the damage to her if he divorced her in the first purification. Also, this is a punishment for him to do what Allah has permitted, so he was punished contrary to his intention, and to simplify the speech on this issue, and to fulfill the words of the two communities for him. Another placement. Rather, what is meant here is to

warn against the words and their take. There is no doubt that the principle is the survival of marriage and there is no shar'i evidence for its demise by means of haraam divorce, but the texts and principles require otherwise. (Ibn Taymiyyah, 3/264) ( ).

**Ibn al-Qayyim (may Allah have mercy on him) said in answer to this question:** Does divorce occur during menstruation or in the purification in which it occurs?

As for the first issue, the dispute over the occurrence of forbidden divorce is still constant between the predecessor and the successor, and they were delusional who claimed consensus on its occurrence, and said the amount of his knowledge, and hid from the dispute what others had seen... How is the disagreement between people in this matter known about the applicants and the latecomers? Muhammad ibn 'Abd al-Salam al-Khishni said: Muhammad ibn Bashir told us, 'Abd al-Wahhab ibn 'Abd al-Majid al-Thaqafi told us, 'Ubayd Allah ibn 'Umar told us, from Nafi' Mawla ibn 'Umar, (Ibn 'Umar (may Allah be pleased with him) reported that he said about a man who divorced his wife while she was menstruating: Ibn 'Umar said: This is not counted)...

This is because there is no dispute among all scholars, including all those who disagree with us in that divorce during menstruation or in purifying its intercourse contains heresy that the Messenger of Allah (may Allah's peace and blessings be upon him) forbade in violation of his command, so if there is no doubt about this with them, how can they be allowed to rule by permitting heresy that they acknowledge is heresy and misguidance, is not the ruling on witnessing that heresy is permissible contrary to the consensus of those who say that it is heresy? Abu Muhammad said: Even if the dispute had not informed us, he would have been a liar against all the people of Islam with what he had no certainty about, nor would he have reported it about all of them. (Ibn Qayyim, 5/201)

### **Conclusion: It contains the findings and recommendations**

Through the advanced pages, we can conclude the following conclusions and recommendations:

- 1- Divorce is legitimate according to the Qur'an, Sunnah and consensus, and there is no way to cancel it or prevent it completely by imitating non-Muslims, as they have their religion, and we have our religion and our Sharia, which we are proud of, because it is from the hands of Hakim Alim.
- 2- Although Islamic law has legalized divorce, it has made it the most hateful of halal and narrowed its causes.
- 3- Divorce has a ruling and purposes that all people know and that fair non-Muslims have attested to.
- 4- Before resorting to divorce, Islamic law established several preventive measures against divorce, including preaching and guidance, including abandonment in bed, non-severe beatings, and family arbitration for reconciliation between spouses.
- 5- Divorce of a woman in menstruation and postpartum or in the purification of the tenth man and the woman in which the divorce heretical forbidden consensus of jurists, but they differed and signed by the public of jurists, and did not sign Ibn Taymiyyah and Ibn al-Qayyim and some contemporary jurists, which we see as likely due to the large number of divorce in our time.
- 6- The paper recommends that Muslims understand the provisions of the family, especially those who are about to get married, and the work of family centers through which the

family passes if one of the parties wants to divorce to try to exert effort and effort to reform between them if they can.

- 7- It also recommends imposing penalties on those who divorce heretically, and the guardian can take the opinion of Ibn Taymiyyah and Ibn al-Qayyim in the absence of a forbidden heretical divorce, until we enumerate preventive measures against falling into divorce.

Praise be to Allah, Lord of the Worlds

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