ABSTRACT

How to Divorce

Until a century ago, in Iran, exactly what was prevalent in the era legislation; divorced from the actions of men, without the need for court and as has been unilateral. But nearly a century ago for all jurisdictions involved in all divorces, ranging from divorce to ask men and women to apply for divorce. Divorce agreement was necessary. Civil law that was enacted in 1907 the judge had given permission in cases of divorce. But because the liberty of the man known as Article 1933 of the Act whenever he wants to divorce his wife, and the optional the Court did not need to say: The term divorce matters governed by the Family Protection Law was enacted in 1973. Single Article reform legislation passed in 1907, passed divorce it would also like to make the entire divorce ruling, and also amended Article 1933 BC. D. also marked the pseudo range. It is clear that the court doubt plays a role in all types of divorces (On behalf of the wife, husband or both), but how this aspect of the distinction between divorce (ruler) and divorce is regarding Ms...

Therefore, and due to this whole divorce court may be but the definition of judicial divorce in the last debate that we did not specify. In fact, we mean that divorce is a divorce court should not couple power. In other words, divorce or even it being compulsory. In fact, the state has an obligation to his wife divorced couples, divorce is legal. So given that Islam and civil law it the will to divorce wife During the discussions, but we know This discussion is necessary, divorce, divorce court In turn, they were divorced woman is given The question is whether the divorce is generally closed to women And when the husband refuses loves it And the common life justifiable reasons And acceptable for a woman is intolerable, Woman convicted of burning building? Or Islamic law is considered ways to get rid of her? In answering this question, it should be said: In the absence of a common life becomes unbearable for women And the husband refuses to divorce and legal right to exploit And the woman is valid Islamic jurists to allow women To the divorce ruling And the ruling will compel the husband to divorce, And if the husband refuses to divorce his wife will divorce itself. In fact they divorce court.

Keywords: divorce, disarmament, obligatory, abomination.

1. Implications of divorce

1.1. Literally

up, free up, leave off, leave, separation, isolation, alienation, separation, destruction, release the shackles, get out, halal, and the Arabic word for marriage break is used. Women also means getting rid of the shackles of marriage, and marriage is getting rid of her. (Mnthyalarb, Mnthkballghat Almsadr Alzyzny, contemporary culture, Arabic, Persian, Azartash, Azarnoosh pp. 402, Almjim, Lexicon Koran, dictionary Dehkhoda). shaking! "And anyway, apparently the word is that divorce means separation (a separation from his wife) of our companions (Imami) means Shryhy it in front of literally that have adopted and are using (Jvahralklam, Najafi, Mohammad, vol 32, Page 1 of 2). The word Persian term falls, and eating and getting close and the customer (the dictionary Dehkhoda); review jurisprudence family law scholar son, Mostafa, PS 379 and PS 380, Mohaghegh, Seyed Mostafa; grace, AR, principles of jurisprudence , pp. 346; Shahalghh word divorce; Mjmalbryn, vol 3, p 57) concluded that the original meaning of the Divorce release the shackles, but as a metaphor for the release of women from the shackles of marriage is used in the end because of the multitude of applications of truth in this sense is . (Shia Encyclopedia, vol 10, p 207; comparative study, women's rights, Sydskry, Hsynymqdm p. 233).

2. Term implications of divorce and divorce terms with Jurist:
3. Meaning of the term divorce lawyers:

which is of course a huge difference not Bhcshm. Some divorce lawyers Ayqa ritual whereby a husband's permission or a court order would leave their wives have defined. (Civil Rights Family Foundation, consistory, N. pp. 219 and 220). This definition can be inferred from the following Khsvsyathay: 1 - Ayqa divorce is similar in the sense that the will of the husband or his agent shall not require the consent of the woman. 4 - Divorce or permission of the court is: what is the real woman to ask for divorce (divorce courts, etc.), what would be the man to ask for a divorce. 5 - divorce by dissolving the marriage is permanent. (Ibid., pp. 220 and 221), some French divorce law professors (divorcee) have defined Divorce Court during the life of the couple's marital ties at the request of one of them or both (Brief Family Law, Hossein Safaei, A. Imam, p 221; tenderloin, education, civil rights), the rights of Iranian divorce court may be without it.punctures or the expiration of the (same).

Article 1939 BC. Bothered about this, "says the divorce is for a permanent contract with expiry Mnqth wife or husband parity afford it gets out of hand. In any case, even when the divorce request or female under deposed or essays done Divorce Ayqa is _ about Ayqa the next sections fully explained _ (ibid., pp. 222) Other scholars of law for divorce to end the marriage by the wife or Husband knows (Civil Rights, Imam, SH, vol 5, p 10) and more Myngard: divorce, the end of marriage permanently by law, provided a divorce with her husband and accuracy consent of the woman or Court or registerNo formality is not necessary but is a ceremonial Ayqa (1860 AH ordered the matter. d.) The divorce must attend at least two just men who will actually hear concubine. (Ibid., pp. 14 to 17).

4. Means deference jurisprudence and legal divorce:

As noted, because of the mix of our rights by legal means Jafari jurisprudence jurisprudence divorce means it is very close and perhaps the only way it can be noted that the difference is greater formality it lies in a divorce legal means, ie the presence of two witnesses, just men, it has been stipulated in the law, despite the leave of the court records and official documents can also be added to it. As a result, the difference between divorce and legal jurisprudence in a different way, not us Hui. (Review of family law jurisprudence, law scholar, Seyed Mostafa, p 380)

5. Divorce is defined as obligatory:

by determining the inverse of the divorce is forbidden and detestable Divorce Divorce is returned with a non-contradictory set. So is divided divorce divorced obligatory, recommended, unlawful and detestable. (Shrhlmh, Shhydsany, vol 7, p 120; Jvahralklam, Najafi, Sheikh Hassan, vol 32, p 140)

In fact, when talking about divorce, it is imperative that man is divorcing his wife under circumstances that adheres to the law have been and if you do not do the first sentence of the provisions of this Dlylkh holy
legislator is not done capital punishment and retribution, and secondly, the judge could force him to do it and then if it did not directly attempt to divorce the wife. (Shrhlmh, martyr Thani, Book Atlaq)

Defines judicial divorce: divorce by a judge without even the so-called judicial divorce. According to Muslim scholars and Islamic countries laws normally present The basic principle is that divorce is actually making it available to men And he can divorce his wife whenever he deems necessary. Although the absolute authority of the law in some Islamic countries is limited so In cases of divorce, he must go to court To the inefficiency of the court's advice, divorce is located, But if a man is determined to divorce His wife can do without certain things, Permission is granted a divorce record. Where couples are short of its legal obligations, Such as refusing to pay alimony, Being the wife of hardship due to incurable diseases. And a pair of long cut and drop the wife of limbo, The ruling opens the way for a judicial divorce. Fully explored in the next chapter about the divorce process. (Civil Rights, Imam Sayed Hassan, vol 5, pp. 81 and 82)

6. Meanings of distress Vhrj

6.1. The lexical definition of hardship:

Hardness of the term "distress" and "sin" are combined. Means a source of distress and difficulty, hardship, difficulty, hardship and poverty, and the event source of distress, shortness Srt means objectively is hard (Persian Culture Amid). Fault name means place of tightness and pressure tight, narrow places and means of payment for sin, a crime, we can not say Hrjy him the confession of his sins, and not (just).

6.2. Jurisprudence and legal definition of hardship:

Every practical man Zygh to pinch pockets, it is difficult and demanding, and conversely, any work done for the man who is tough and hard. Cause tightness and the pressure is on him to say. Important thing Bhchshm ate the evidence and criteria for determining hardship, custom according to which, whatever the cause hardship and difficulties, sin and difficulty also seen (rule of law, civil sector 2, Mohaghegh, Seyed Mostafa, page 62 ). Lahrj rule known as the rule of law, and in all chapters, worship, transactions, and political will flow. (Rules Alfqyh, Bojnourdi Mousavi, SM, p 137)

Check juridical jurists were necessary to govern the divorce decree (divorce court) The first are those who believe in divorce court can Fqhayy such as Shaykh Mufid (RA), Slar (RA), Abyalslah Khan (RA), and the Mtakhryn Mirza Qummi (RA) and also Shaykh Husayn Hilli contemporaries (RA), Ytalzmy Khoi (RA) and Imam Khomeini named. Expertise in the works of jurists have said the full impact of the late Sheikh Hussain Hilli as we talk about rights Alzvjyh Alvzy works written by the late Bahrol-olum (RA) in Bhsalfqyh Dravrdhand wrote this article. (Judicial divorce, Alai Rhmany, F., social studies, psychology, women, summer and fall of 2001, No. 8, page 49).The judge will see that the right to divorce judge forced her husband to divorce her husband if it is to avoid, as Vyymmntn ruling, the woman will divorce (Bhvsalfqyh, Bahrol-olum, Izz al-Din, p 175). It seems that these verses than her husband must take one of two approaches: Or fully fulfill his rights and his duties must do so (known as forbearance) Or her well on Sharia law to divorce (Accelerated Bahsan). (As explained in the previous section was completed discussion, Here we express opinions and juridical jurists and Sometimes) He concludes that neither marital duties to act in the place where he will not divorce. Should be obliged to divorce her first husband called and said And if he refused to divorce, attempted to divorce his ruling, And to request the province of women, husband, wife to divorce Select your happiness with another woman's husband to recover and there is no third way. (Bhvsalfqyh, Bahrol-olum, Izz al-Din, p 186)

Mirza Qummi in Jamalshat this in the form of questions and answers that have been clearer: "Q: When Zayd incompatible with Zyvjhash laid the foundation, and continued to tease her, But it would break beat and leading Bhzhkm, While respecting the rights of the wife in a couple of minutes not leave pattern And couples in attendance stated that my wife does not use And absolutely do not like him and do not divorce her, however, any determination shall result Couple that with the conservation of parity between their revulsion of the act can not be denied ... The judge whether believers or compromise could compel him to divorce or not? "Fatwa answered them, such that: "There is no doubt in the fact that even though the wife is in violation of their rights, is Nashz-h wife. The wife of the couple's legal Nashz couple is in violation. The maintenance of law and wife,
the couple agrees Ksvhy him to the holy law And he does not Kjkhly no legal means. So every time a pair of woman's rights violations and demanding the pair did not benefit, Rjvd the judge and the evidence before the ruling, the husband would necessarily compel To deliver on the divorce or wife, Whenever the governing of conduct to ensure that the couple is not known And fulfill the rights of the wife does not, she is forced to divorce, This compulsion is incompatible with the accuracy of divorce. (Jamalshtat, Mirza Qummi, vol 5, p 150)

The late Grand Ayatollah Khoi (RA) has also brought the issue However, leaving that part of the subject emphasized charity. But on the whole it seems that not even the maintenance of the parity of duties to avoid Nbkhshd benefit obligation and the court ruling could be divorced wife. (Mnhajalsalhyn, SA, temperamental, vol 2, p 280, Issue 1406)

Drgftarhay Imam Khomeini an undesirable condition for the liberation of women, divorce provinces stipulated: "It is the supreme dignity Zvjhash bad if a man shall His first and second admonition discipline and you will see the implementation of a divorce. "(Purified light, Mousavi Khomeini, vol 10, p 87)

"Is the provincial leader for the fact that corruption kills husband, a life is corrupted, divorce, and divorce, although the guy is, but where the interests of Islam leader saw the vision of the Muslim interests, and the where is the exception to this, is divorced. It is the supreme leader. "(Ibid., vol 10, p 88)

"If a man had abused his wife in Islam forbids him that, if he did not quite accept that, as they are, and if refused, the priest will divorce." (Ibid., vol 11, p 255)

Accordingly, the Guardian Council in 1961, while commenting on the case law of Imam Khomeini's ruling on the obligation of the husband to divorce in cases of hardship will Astfta And he replied: "Caution is the supreme obligation advice to couples forced to divorce his And if not possible, to the judge's permission, is divorced; Another thing that is easier if it was a dare. " (New perspectives on legal issues, Mehrpour, H., pp. 243 and 244)

The words of Imam Khomeini can be understood to be:
First, when the husband does not discharge the rights of the woman and forced her to perform Vajbhy not possible, sovereign compulsion to divorce her husband, and the husband refuses to divorce her own governing divorce and the divorce is religiously correct.
Secondly, the way Ahtyatamyz way, and another way is also a solution to this problem, though not with caution. Thirdly, in the last part of the answer to the "easy way" is mentioned, but because dares not tell, because it's much easier to say what is and is not. (Judicial divorce, Alai Rahmani, F., Social Psychological Studies of Women, 2002, No. 8, p 52)

The reason for this can be said that currently runs on laws relating to women, strictly in accordance with Islam and Islamic rule and is consistent with the development of modern societies. Today we Thvlyafth issues based on internal and external features of the response time and maintaining a content basis, subject to change if the rules changed. For example, our law is consistent with the traditional society, the society shall be consistent with achievement and govern the relationship and the so-called reaction after the fatwa was shown. (Ibid, p 53)

But he meant what way is the easy way?, then the man goes out and therefore they are women. Even though they are divorced from the man (that man can give a woman), but in case of fault, the woman lies on one side of the story, the man freed himself from the shackles of life and is divorced. And perhaps what Imam (AS) answered questions about their husbands' families Mfqvdalashray war spoken of in certain situations can get a lawyer to help them remember why were divorced. Another possibility is to require his wish, terminating marriage is a woman from the imperfections of man to the woman, "and seeks Lazrar" and otherwise be entitled to terminate the marriage, here also can terminate the contract and adherence to This rule is common.

(In presence of Ayatollah Sanei Sanei, Joseph, Message wife, Issue 51, June 1975, p 8) in between and among scholars of contemporary Ayatollah Ali Sadeghi Tehrani (ra) known as the Issuing fatwas Shaz and the Koran new about divorce and distress and sin is not that bad to have a fatwa fatwa review them and discuss the basics of the fatwa. Fatwa text is as follows:
1 - No man has the right to non-state Zvjhash hardship as unilateral divorce, so divorce is religiously unlawful and void.
2 - The life of any married woman who is in distress is obligatory if Hkmyn mediation fail, and then with conclusive proof Asarsh both the righteous judge, the witnesses Dlyn their divorce.

He further evidence that the verdicts of pay as follows: Mobin Quran in Sura verse "or stands Alzyn Amnva Avfva Balqyd ..." (M: 2) Vfa’ contracts and intellectual faith and knowledge necessary for this one verse Bhnqtzay Srahtsh, commitment of the parties to the marriage is legitimate, rational proof of the necessity of divine Balghdy. The only faith-based marriage itself sufficient evidence of the validity of the contract, and
violation of milk without proof the Qur'an is not permissible. Although other verses of the Quran, to further illustrate the accuracy of the terms of contracts paid. Therefore, based on contracts foolishness, deceit or parasites and is not Vajbalvfa'. Rather than the source of such contracts is collected. Therefore the Faith "Avfva Balqvd" word "Alqvd» Nsy in the allocation of public and yes it is therefore necessary to implement it, and because of its breach of any verse of the Quran calls the verse excludes not. Even the marriage void, the qualifiers "Alqvd" Marriage is not meant as Tkhssa the outside. Finally, it is said on the subject marriage existed "Alqvd" do not say a Muslim marriage "Alqvd" and "marriage" is. So such claims, the ijtihad of Nsy prohibited and void and separation distress in the marriage contract as a single component or a sin is forbidden. So if a couple wants to divorce wife in milk, such as unilateral divorce is religiously forbidden, it actually is not invalidated.

Verse of Sura "Vlhn like Alzy Lyhn Balmrvf" (Baqara / 228) also draws parallels rights not stop the couple appeared in public in name only Tqyyd and its allocation "and Lhrjal Lyhn degree" that the people «o» just see Mshanh Revocable divorce permitted in some regards and that .... Although the "o" is the spiritual side, the only real distinction is based on the Quranic verses later is a virtue. It means Mmasls couples similar rights is sentences and answer the question there are some sentences Dissimilar Couple equality is equality has three dimensions:
1 - absolute equality of spouses, moral rights, gender, housing, clothing, food and all the family needs.
2 - The wife's apparent preference for some sentences, such as dowry and alimony.
3 - seeming preference couple of sentences such as inheritance, blood money and raised doubts in the third dimension, but because of the divine rights of the spouses takes the same amount. As a result, the apparent preference for mutual interaction and balance in both the superior, equal rights, creating a total salary of each of the spouses and their possible enough, without much respect for Islam and its detailed interpretation is Alfrqan .know?

In the famous fatwa Privacy Islam is a cruel libel unintended consequence Licensing opinion cruel hand of God in the minds of women. But God glorified in Sura Al-Baqara verses 229 and 231, respectively, with the sentences "Accelerated Bahsan Famsak Bmrvf sh" and "Srhn Bmrvf" permits divorce only known issue with charity and has said ... and since sin and distress in married life " The famous ", so a definite sense of Famsak Bmrvf "sanctity invalidity of unilateral divorce by the husband, the wife is Ysr .

Finally, it is true that the majority of the audience are men verses about divorce As is typically the divorce proposal But none of the verses as divorce is unqualified in audience, Never mention that not only does not permit absolute divorce for men Moreover, God in verse Mobarake "Yrydallh Alysr and Layryd Website Of The Website Alsr" (Baqara / 165). Sryhaasl Ysr enforce the Qur'an has said. Thus, according to these narratives were both divorced couple. In other words, as of men and women in marriage and share continuing to comply with the equal right to divorce if they are legitimate. And so somehow, called "I'm getting Balsaq" includes spouses, and no evidence of monopoly. "I'm getting Balsaq" There are couples. Thirdly, if not conflicting with the narrative, a narrative that Morsel Aisha is weak. Fourth, if justified by the narrative and the consensus based on say, as opposed to the narrative of the Quran, Quranic texts consensus is against it, and so it has no value (quoting the website of the office of Grand Ayatollah Mohammad Tehrani doctor (RA), www.forghani.ir)
The reason for the fatwa against all fatwas clear understanding within the juridical Imamiye though the ancients and contemporaries Mtakhry Imami paid Perhaps it could be seen in some Barqhuhay but he is very clear fatwa on this topic. Here we sought to sting but do not think the priest and pundits have died.

7.Legal review of divorce court:

As discussed in detail in the speech jurisprudence Jurists in cases where the wife has the possibility of divorce, In fact, this type of divorce, the first woman to divorce court Divorce Court and comply with the conditions and under the divorce decree or the divorce court a woman requested the Iranian Law is as follows:
1 - The husband of missing the durability of parity is causing hardship wife.
2 - paralysis and refused to give her.
3 - Perform other duties of a husband's refusal to comply with such Mzajt close and ....
4 - hardship.
5 - The case of the substituted attorney is a lawyer and his wife would divorce; worth noting that divorce Zharkndh Ayla’knndh and can also fit in this division.

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8. Absent wife divorced missing:

The most obvious case of this is found in all religious books. If a man missing for four years, was absent and there is no sign of life and death over his wife can go to court to request a divorce. Our Civil Code Articles 1029 and 1023 of this issue and to follow Ja'fari jurisprudence this verdict is upheld. are absent in the press are invited to notify the court if the news spread. Whenever one year from the date of publication of the first notice issued divorce court pass and life will not be proved absent. (BC. d.) The divorce and the court is doing is revolving. (Article 103 BC. M.) (new perspectives on legal issues, Mehrpour, H., P. 238; brief on family, fun and Emami, H, and Asadullah, pp. 237 and 238)

9. Frustration, and the husband refuses to give:

In the case of the husband to the wife does not give any reason Forcing him to have the divorce decree or jurists give. In accordance with Article 1129 BC. M. If the woman's hometown to benefit the charity can issue a warrant And the issuance of Executive against the husband is not executed, The wife asked the court to compel the husband to divorce court, divorce decree, and will And if the husband does not implement the court order, Judge or his agent instead Mstnkf husband divorce action and its signing will be. (Ibid., pp. 238, Ibid, p 233)

10. Husband refuses to perform other legal duties:

If the husband refuses to comply with the duties and obligations It's not charity, that sentence was passed, Relative to other rights, such as near Hsnkhq and wife to disobey, She can go to court and ask for binding couples to do your homework. Taking the issue to court if the husband is obliged to perform its obligations. Even if the husband refuses to perform his duties is punishment and punishment. Finally, the court itself will divorce action. (New perspectives on legal issues, Mehrpour, H., P. 239)

11. Woman hardship:

Another case for women as a pretext to get rid of the paragraph is married He is a hardship. On this basis, the following marriage The cause of such abuse husband or incurable disease. Or imprisonment or long lasting addiction or long absence of her husband and others like them, Make life difficult for the wife to put him in a straitjacket and extreme difficulty Can not divorce court If this were proven at trial, If divorce is a court order requiring the husband to divorce his obligation is not possible to leave the court in a divorce. (Ibid, p 240)

Article 1130 BC. M.:

Article 1130 BC. M. amended three causes for divorce before her request was stated as follows: "This article is the last in the following:
1 - In cases where the husband does not fulfill other rights Vajbh woman and forcing him to play is not possible.
2 - profit association that continued life Bnhhv husband wife makes him intolerable.
3 - If the proposed marriage long lasting incurable contagious disease caused the woman is endangered.

However, the above article was Mbanyty with Islamic law And references in paragraphs 1 and 2 expression was found Imami jurists As we saw in the previous sections and section 3 was based on the rule of hardship That of Moslem religious rules, Judicial Commission of Parliament to be amended as follows:
"The judge can refer the woman to divorce: Thus explaining the hardship and discuss how it is relative to each person what is the weight of it is important.Every person is different than in this case. Article 1130 BC. Meter broadly amended in 1980: "If the durability of parity is causing hardship wife, he can go to the judge and ask for a divorce. If the hardship is proven in court, the court can compel a couple to divorce, and if coercion is not possible, the divorced wife of the judge's permission. " (Brief on family, fun and Emami, H, and Asadullah, p 235)

Since Article 1130 BC. M. was somewhat ambiguous Insufficient guidance to judges to recognize the hardship would In practice whereby the votes were dispersed, Legislators have begun to clarify concepts and provide examples of So plan on joining 3/7/1979 Note to Article 1130 BC. M. was passed by Parliament, And the
Guardian Council was objectionable. In order to implement Article 112 of the constitution was referred to the Expediency Council and the Assembly on 4/29/81 during the design units incorporating a clause to Article 1130 BC. CE approved.

This clause provides that the definition of hardship and adversity in life that give five examples of hardship include:
1. leave the couple's daily life by a staggering six consecutive months or not.
2. Pair of addiction to drugs or alcohol.
3. Pairs definite conviction to imprisonment for not more than five years.
4. beat or any sustained couples traditionally given the status of wife abuse is not tolerated (criterion expresses personal hardship).
5. suffering from incurable diseases in the past couple of Note also underlines.

It does not prevent the court cases mentioned in the other woman's hardship can be proved in court that issued the divorce decree. After hardship include: severe or serious hardship and customarily personal standard than anyone is intolerable. (Ibid., pp. 236 and 237)

12. Female representation in divorce:

Article 1119 BC. M. In this case, he says, "provided that both parties to the marriage can not disagree with the conclusion of Mqtzay while signing a marriage contract or other necessary preparations. After proving the fulfillment of the condition for which the court issued its judgment absolute. " It is also likely that we issue under the legal divorce forms that must be admitted that we have neglected to do so. (Ibid., pp. 238 and 239; New perspectives on legal issues, Mehrpour, H., P. 244)

13. Whether absolute or general power of attorney in divorce is true?

If this condition is not contrary to the contract itself is not illegal Mqtzay. Mbyh then it must be considered. Article 1119 of the general BC. Civil AD means after undergoing follow. (Brief on family, fun and Emami, H, and Asadullah, pp. 339 and 340)

14. CONCLUSION

In general, we find that the first part of the divorce court divorce is necessary. Second, it is most true hardship is relative to each individual can make a difference May apply for a hardship is a private housing But not another So it is very important Brkhvrdkndh one type of hardship.

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