

Electronic Divorce Provisions

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Received: April 25, 2023

Received in Revised: May 14, 2023

Accepted: June 4, 2023

Abstract

Electronic divorce is the solution of the marriage association by the international pronouncement of the husband explicitly through the means of modern communication. If the divorce takes place through the internet means in the form of a text message then the divorce will pronounced verbally, and he will take his judgment whether it is explicator not in all cases the conditions of divorce stipulated by Muslim jurists be met.

Keywords: Divorce, Pronunciation, Provisions

Introduction

Praise be to Allah, the Lord of the worlds, and the best prayers and blessings have been delivered to our Lord Muhammad and to God and all companions, either After. Divorce is the lifting of the marriage restriction by the rhythm of the husband or wife, if he is entrusted or delegated or by a judge, and divorce occurs only in the form assigned to him legitimately, but recently there has appeared what is known as electronic divorce, which is a new issue facing the judiciary and requires consideration of its provisions, and there are many questions about And other means of the internet is a de facto and effective divorce or a null and void divorce that does not count.

This is what I will explain in this simple research, where I divided it into two researches, the first one is related to the definition of divorce and its pillars, and it falls into two requirements, the first requirement is the definition of divorce, and the second requirement, in which I dealt with the pillars of divorce (ABED, 2023).

As for the second topic, I explained the photos of electronic divorce and ways to prove it, and it falls into two requirements, the first requirement is specific to the photos of electronic divorce and its provisions, and the second requirement clarifies the ways to prove it.

Definition of Divorce and Its Elements

Divorce is the most abhorrent halal solution to God Almighty and the first step on the way to breaking up the family and the emergence of social problems, but in cases where the disagreement between the spouses widens and the dispute intensifies so that married life becomes impossible to continue and it is impossible to reform, divorce becomes a necessity, and accordingly, in this discussion, I have addressed two requirements, the first. (Abu al-Hasan Ali Abd al-Salam al-Tawassoli, Al-Bahha fi Sharh al-Tuhfah, 1998).

Definition of Divorce

Divorce Language: It is the solution of the document and it said to release the mare and the captive And the divorce is taken from the release, which is sending and leaving, and she says to release the captive if she analyzed his shackle and sent him. It said that the divorce of his

people left them and separated them and the shooting was uttered, free and unrestricted divorce (Muhammad & Farhan, 2022).

As for divorce, there are many Fiqh definitions of divorce with a variety of doctrines and opinions, the scholars of varieties defined it as the dissolution of the correct marriage bond and the termination of the relationship between the spouses in money and food by a word indicating that or what is based in writing or reference (Ibrahim, 2022).

As for the jurists of Ja'fariyya, they defined divorce as removing the restriction of marriage in the form of a divorce, which means that the divorce is not permissible (Al-Sayed Sabiq, 1985) Shafi'i jurists defined it as dissolving the marriage contract by pronouncing divorce and so on As for the Maliki jurists, defining them as the definition of items is that the fixed restriction was lifted legitimately by marriage. The hanbalis define it as a solution to the marriage restriction or a bite, if it is a Bina, it is a solution to the marriage restriction as a whole, and if it is reactionary, it is a solution to some (Dia Kazem Al-Kinani, 2010).

As for the definition of divorce legally, it was defined by the Iraqi Personal Status Law No. for a year amended in paragraph (First of all) From the article (34) Divorce as a : The marriage registration is lifted at the request of the husband or wife, if he is entrusted or delegated by him or by a judge, and the divorce does not take place except in the form allocated to him by law) Since divorce affects the spouses, the power to bring it about is in the hands of the husband whenever he is welcome (To set him up) And the wife has the divorce order by her own will alone, unless it is stipulated in the marriage document (Versi, 2010).

As for the electronic divorce - Subject of study - It is the dissolution of the marriage bond by a word intended by the husband explicitly or euphemistically through modern means of communication, it differs from ordinary divorce in the role played by the electronic medium used in the rhythm of divorce because it is carried out remotely between the spouses.

The Second Requirement- Pillars of Divorce

The jurists of the Ja'fari doctrine added a fourth pillar, which is the testimony, as for the divorced, the husband, who proves to him the right to divorce once the correct marriage is concluded, and because of the danger of divorce for the family, the jurists have set conditions that must be met in the absolute so that he can cause divorce, namely that he is an adult, the divorce Legitimate adulthood is reached by dreaming and this is the opinion of the public of Jurists As for the jurists of Ja'fariyya, they have authorized the divorce of the boy if he reaches ten years He also stipulated in the absolute that he must be sane, as the audience of Jurists believes that it is not valid to divorce a madman or a maniac, and they disagreed on whether the drunk divorce took place or not, the audience of jurists agreed that it happened, except for Ja'fariyah, they did not allow the drunk divorce in any case (Dyrda & Gizbert-Studnicki, 2022).

It also stipulated in the absolute that the rhythm of divorce should be chosen, so if it is forced, then there is no divorce, and the audience of jurists agreed on this, except for the Hanafi [9] this also applies to the divorce of the Hazel Sinner.

As for the position of the Iraqi law, the article stated (35) From the Iraqi personal Transfer Law No.188 for a year the rate (The following persons do not get divorced); (1) The drunk, the crazy, the insane, the hated, and those who were indistinguishable from anger, sudden misfortune, old age, or illness; (2) A patient in a dying illness or a condition in which death is predominant if he dies in that illness or condition and his wife inherits him) .

It is note that the Iraqi legislator has resolved the issue in the cases referred to, the court no longer needs to refer to jurisprudence.

As for the second pillar of divorce, the divorced woman is the wife of the divorced, she is the subject of divorce, and she must be a wife with a valid contract, not corrupt or invalid, and it is not required that she be in a place of purity where she did not have intercourse at the time of divorce, as her divorce is valid in all cases (O'Donnell, 1982).

The formula is the third pillar of divorce, which is the word indicating the dissolution of the marriage contract explicitly, such as (You are divorced) Or a euphemism like (Assault) This is what went to the Hanafi mechanism, unlike what went to the Ja'fari jurists, that the formula of divorce should be The divorce formula may be completed, indicating that the word divorce is a clear indication, such as the husband saying to his wife that you are divorced, and the formula may be pending on a condition, such as the husband saying to his wife that if she enters your family home, you are divorced.

The audience of jurists agreed on its occurrence, but Ja'fariyah said that no divorce should occur in any form pending on the condition of (Saeed et al., 2023).

As for the Iraqi Personal Status Law No 88 For a year 19-the rate did not specify the formula in which the divorce takes place, and was limited to the text in the first paragraph of the article (34) From the law " Divorce does not take place only in the form assigned to it by law" Leaving the court to refer to the doctrinal provisions of the divorce formula, however, he placed a restriction on this formula in the article (36) He stated " An incomplete, conditional or used divorce does not fall into the right formula.

The jurists of Ja'afariyya have added a fourth pillar to the pillars of divorce, which is testimony, and they stipulated that the witnesses must be two just men, with the two witnesses having to attend the divorce Council together, and this is what the court of Excellence went to in one of its decisions " Because the parties to the case are from the Ja'afari sect, it is not valid to divorce unless two just witnesses are present and then the verdict is issued in light of that " (bin Hassana & bin Idrisa, 2016).

Photos of Electronic Divorce and Ways to Prove It

Modern means of communication have evolved from the internet, telephone and others, and it began to be used in the smallest details of life, including divorce, but the question of how to prove it may arise, so I addressed in this paper two first requirements. Especially the image of electronic divorce and the second ways to prove it.

Photos of Electronic Divorce and Its Provisions

With the expansion of man in the use of modern technology, some began to use it with unique things, such as a husband divorcing his wife by using one of the electronic means, does this divorce occur or

The answer to this is to clarify the photos of electronic divorce, which are as follows:-

The divorce may occur through an electronic text message via a mobile phone sent by the husband to his wife with the intention of divorcing her with an explicit written word, and here the husband used a written means, and writing is like pronouncing a sentence, so if the husband wrote to his wife, you, he is divorced, divorce will occur provided that the writing is clear, i.e. clear and Immediately, regardless of the program used to send the message (Dia Kazem Al-Kinani, 2010).

But if the writing is not identified, there is no reason for it at all, but if the writing is not drawn, then the divorce is considered canonical and its provisions apply to it, The canonical divorce refers to the word that is likely to divorce and other possible meanings such as intimidation,

and this indicates the intention of the husband of the rhythm of divorce or not, the husband was writing to his wife " The truth about your parents.

It may be his intention to catch up with them without returning to him, so it will be a divorce, and it may be intended to catch up with them to visit them, this word is considered not explicit in showing the intention of divorce, and most likely the intention of the husband in the rhythm of divorce or not, and this intention is not revealed The divorce takes place This is what the Muslim jurists agreed upon, except the jurists of the Ja'fari doctrine stipulated the formula The divorce takes place

Frank divorce to be verbally abused "Divorced" On the weight of an actor and does not count on others The occurrence of divorce by writing they have to be able to pronounce .

As for the other image of electronic divorce, it is sending a voice message from the husband to his wife in which he pronounces the word divorce, so if the woman hears her husband's voice and makes sure that he is the speaker, then the divorce takes place verbally and takes wisdom and is either explicit, i.e. indicates a divorce without others, there is no dispute about whether it "You are divorced " Or divorced or divorced you.

As for whether it is a metaphor, we have already referred to the above provisions

And the divorce may occur through a direct oral conversation by voice and image, this divorce is no doubt taking place, In all cases, the conditions of divorce mentioned above must be met in accordance with each doctrine

The Second Requirement Is Methods of Proving

Electronic divorce needs to be documented and confirmed by the competent courts, and the husband may deny the divorce, resulting in the wife (Burden) What means of proof are available to prove the fact of divorce(E-mail?)

The declaration is considered a means of proving electronic divorce and has been defined by the Iraqi legislator in a law

Proof number 107 For a year 1979 The acknowledgement. He is telling the opponent in front of the court about his right to the other, and this is what the article stipulates (59) First of all) It is not true that the declaration of the insane or the insane, nor the declaration of their parents or guardians, or the strength on them, and that the headquarters for him exists a fact or a judgment at the time of issuing the declaration and that it does not lie apparent Course.

In the event of filing a lawsuit to certify the divorce through modern means of communication before the court, the husband must acknowledge before the judiciary that he divorced his wife and determine the divorce formula, the means of communication, time, place and how, even if he was fully qualified and intended to divorce his wife and her exit by the correct marriage concluded between them, and this is what the Personal Status Court went to in one of its decisions " Since the divorce occurred from the spouse by (Skype) And the two witnesses heard the divorce, and because the couple is imitators of the Ja'fari doctrine, the court decided to rule to certify the divorce outside the court " Also, the fact of electronic divorce can be proved by testimony, because divorce is one of the physical facts, it may be proved by testimony, and this is what the article states (76) From the Iraqi law of proof, if the opponent denies the validity of the divorce, resort to bringing the witnesses of the divorce board before the competent court, if they testify to the divorce from the husband in addition to his wife, whether the divorce was divorced in front of her, such as being with the divorcee in the divorce board or the divorcee decides in front of her to divorce his wife, such as saying in front of them, I divorced my wife and sent her an e-mail.

Divorce hearing via mobile device (Images and sound) that is enough to certify the divorce on According to the doctrine that the parties imitate

Results and Discussion

Divorce is the dissolution of the proper marriage bond and the termination of the relationship between the spouses in money and food by a word indicating that or what based on a metaphor or reference. The jurists of the Ja'fari madhhab added a fourth pillar, which is the testimony of Modern means of communication have evolved from the internet, telephone, etc. and they began to be used in the smallest details of life, including divorce and multiple photos, it may be done by e-text message and through. The phone may be via a voice message from the husband to his wife pronouncing the words of divorce. One of the most important ways to prove electronic divorce is the declaration, which is considered a means of proving electronic divorce, as well as it can be proved by testimony because divorce is one of the material facts.

Recommendations

Adding legal texts dealing with the occurrence of divorce by electronic means of communication. Supporting scientific and academic institutions to contribute to raising citizens awareness about the use of electronic means of communication.

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