



The Rule of Establishing the Jurisprudence in Judicial Separation

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Abstract: This research dealt with the topic of “The rule of establishing the role of jurisprudence in judicial separation”, highlighting the jurisprudential and legal basis for separation between spouses, and its impact on achieving social justice. The research started from defining judicial separation in language and terminology, explaining its legitimacy and importance in achieving justice and removing harm. It also focused on the role of the principles of jurisprudence and the jurisprudential rules that influence the issuance of judicial rulings related to separation. The research reviewed the types of judicial separation, such as separation due to harm, failure to provide for, insolvency, and the absence or imprisonment of the husband, with an analysis of the legal rulings for these cases and a comparison with Iraqi law. The judicial procedures followed in separation cases were also studied, as well as the role of judicial interpretation in achieving flexibility and justice according to Islamic law. In the last section, the research discussed the emerging effects of separation on spouses, children, and society, and conducted a detailed comparison between jurisprudence and law, highlighting the similarities and differences. The research aims to enhance understanding of the jurisprudential and legal rules related to judicial separation, and to provide recommendations to improve the role of the judiciary in addressing family issues in a way that achieves the objectives of Sharia and ensures justice. Finally, the research concluded with a set of conclusions, recommendations and proposals.	Review Paper
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INTRODUCTION

Praise be to Allah, who has legislated and perfected the rulings, and completed His law and perfected it, and peace and blessings be upon our master Muhammad, who conveyed the message, fulfilled the trust, and advised the nation, and upon his family and companions, all of them.

Family relations are among the most important foundations, upon which human societies are built, and Islam has paid great attention to organizing and protecting them, making marriage a solemn covenant based on affection, mercy, and mutual rights. However, disputes may arise between spouses that make it impossible for married life to continue, which necessitates the intervention of the judiciary to decide between them in order to achieve justice and remove harm.

Judicial separation has come as one of the legitimate and legal solutions to address these disputes,

and it is a means to guarantee the rights of both parties and protect the public interest. However, this topic raises many questions about its jurisprudential foundation and the position of Islamic jurisprudence on it compared to positive laws.

We want to study such a topic in terms of the foundation of the rulings related to judicial separation, given its importance to the topic of family and social life. It also sheds light on the extent to which judicial rulings are consistent with the objectives of Islamic law.

Importance of the Research:

This research gains great importance by addressing a vital topic that touches on one of the pillars of the family and society, which is judicial separation between spouses. The importance of the research lies in the following points:

- Establishing the legal provisions for judicial separation:** The research contributes to demonstrating the extent to which judicial

separation provisions are related to jurisprudential rules and legal objectives, which highlights the flexibility of Islamic jurisprudence in dealing with family issues.

2. **Promoting family justice:** The research provides a comprehensive vision of the role of jurisprudence in achieving justice between spouses and removing harm, which contributes to protecting the rights of all parties and ensuring the stability of society.
3. **Keeping pace with legal developments:** It highlights the positive laws related to judicial separation, and the extent to which they are consistent with jurisprudential rulings, which helps in suggesting improvements to existing legislation.
4. **Supporting comparative studies:** The research provides a comparative study between jurisprudence and law.

Research Problem:

The research addresses the problem related to the extent of the rooting of the role of Islamic jurisprudence in judicial separation, and the extent of its compatibility with positive laws. The main problem is to answer the question: What is the ruling on rooting the role of jurisprudence in judicial separation?

Research Objectives:

1. Clarifying the jurisprudential rooting of judicial separation and its importance in achieving justice.
2. Studying the jurisprudential rules and legal objectives that support judicial separation.
3. Analyzing the points of agreement and difference between Islamic jurisprudence and law in matters of judicial separation.

Research Methodology:

- Analytical method: To analyze the legal texts related to judicial separation.
- Comparative method: To compare jurisprudential rulings with positive laws.

Research plan:

Chapter One: The Jurisprudential Basis for Judicial Separation

Section One: The Concept of Judicial Separation and Its Importance

First Requirement: The Concept of Judicial Separation in Language and Terminology

Second Requirement: The Legitimacy of Judicial Separation and Its Ruling in Sharia

Third Requirement: The Importance of Judicial Separation in Achieving Justice between Spouses

Section Two: The Principles of Jurisprudence and Its Rules Influencing Judicial Separation

Section One: The Principles of Jurisprudence and Their Impact on Judicial Rulings

Second Requirement: The Jurisprudential Rules Influencing Judicial Rulings

Chapter Two: Types of Judicial Separation and Its Jurisprudential Rulings

Section One: Separation Due to Harm.

Section One: The Concept of Harm in Jurisprudence.

Section Two: Types of Harm Leading to Judicial Separation.

Section Two: Separation Due to Failure to Provide and Insolvency.

Section One: Definition of Maintenance and its Ruling.

Section Three: Conditions of Maintenance That Must Be Available.

Section Three: Separation Due to the Absence or Imprisonment of the Husband.

Chapter Three: The role of the judiciary in separating spouses, and new developments.

Section One: Judicial procedures.

Section One: Judicial procedures related to separation.

Section Two: Judicial interpretation and its role in Sharia.

Section Two: A comparative study between jurisprudence and law in separation cases.

Section One: Similarities between jurisprudence and law.

Section Two: Differences between jurisprudence and law.

Section Three: New effects of separation between spouses.

Section One: Effects on the wife.

Section Two: Effects on the husband.

Section Three: Effects on children.

Section Four: Societal effects.

Conclusion: - Conclusions, recommendations and suggestions.

1. Jurisprudential Foundation for Judicial Differentiation

The meaning of jurisprudential foundation is a methodological concept and it means searching for a jurisprudential origin or root that investigates the ruling on a new issue that has not been met in jurisprudential issues or exists but indirectly, and the purpose of that is to build a legal ruling on it, it is a scientific method that aims to establish the foundations and general rules on which Islamic jurisprudence is based, or to rebuild jurisprudential rulings based on these rules.

Jurisprudential foundation includes:

1. Collecting texts and legal evidence from the Qur'an and Sunnah that establish rulings.
2. Establishing the general rules from which partial rulings are derived.
3. Clarifying the relationship between jurisprudential rules and detailed rulings, to clarify how rulings are derived.
4. Reviewing jurisprudential issues according to disciplined principles and rules.

Objectives of jurisprudential foundation:

- Regulating jurisprudential ijthad and ensuring its continuity.

- Clarifying the foundations of rulings to be more consistent and flexible in the face of new developments.
- Unifying the understanding of jurisprudence and reducing the unreasonable disagreement between scholars.

Example:

When establishing the issue of the sale of uncertainty, reference is made to the legal texts, such as the hadith of the Prophet (peace and blessings of God be upon him): "He forbade the sale of uncertainty." Then a general jurisprudential rule is built on that: "Every sale that leads to dispute and deception is forbidden."

Thus, establishing becomes a tool for understanding the rulings and establishing them according to established rules in the Sharia.

First topic: The concept of judicial separation and its importance

First requirement: The concept of judicial separation in language and terminology.

Separation in language: Separation in linguistic terminology is from division and separation meaning separation and it is the opposite of gathering and from it: *faraqah*, *yafriqahu*, *farqan*, and *farqah*....

The name of the division with emphasis is the separation between bodies, and the lightening is the separation between two things, so it is said: *faraq yafriq farqan*, and what is meant here is the separation of bodies is the opposite of gathering.

And differentiation in the terminology of jurisprudence: It comes with the meaning of separation:

According to the Hanafis: Lifting the bond of marriage.

According to the Malikis: It is a legal characteristic that lifts the permissibility of the husband's enjoyment of his wife.

According to the Shafi'is: Dissolving the marriage contract.

According to the Hanbalis: It is dissolving the bond of marriage or some of it.

And the judiciary in language: It is the source of *qada* and it comes with the meaning of separation and cutting, and it is said *qada* between the two opponents, meaning he ruled between them, and the judiciary in terminology:

It is the ruling according to what Allah has revealed, and the ruling between people, and the name of the judicial:

It is everything that is attributed to the judiciary and issued by it and the technical concept of separation is as mentioned by Wahba al-Zuhayli: It is the dissolution of the marriage: It is its termination by the husband's choice, or by the judge's ruling, and separation in language means separation, and its plural is separation, and in terminology: It is the dissolution of the marriage bond, and the severance of the relationship between the spouses for one of the reasons. And separation is of two types: separation of annulment and separation of divorce.

The dissolution can either be by mutual consent of the spouses, which is called *khul'*, or by a judge.

The second requirement: The legitimacy of judicial separation and its ruling in Islamic law

Judicial separation is a legitimate matter between spouses, and there is evidence of its legitimacy.

It is a matter agreed upon by all Islamic schools of jurisprudence, but its conditions and reasons differ according to the school. Jurists have established specific foundations for the permissibility of the judiciary's intervention in separating spouses, if there are proven reasons that are considered legitimate by Islamic law that prevent the continuation of marital life. The following is a summary of the position in the most prominent schools:

1. Hanafi School:

- The principle is that judicial separation is not approved except in very rare cases, because divorce, according to them, is the right of the husband.
- The judge can separate in cases of severe harm (such as desertion or inability to provide maintenance), but under strict conditions.

2. Maliki School:

- It is considered one of the most expansive schools in accepting judicial separation.
- The judge permits separation for many reasons, including:
- Realized harm (such as physical or psychological harm).
- Failure to provide maintenance due to insolvency or refusal to provide maintenance.
- Long-term desertion.
- Diseases or defects that prevent the continuation of marital life.

3. Shafi'i School:

- It believes that the judge separates the spouses in special cases:
- If the husband is unable to provide maintenance and cannot be obligated to do so.
- If a defect is found in one of the spouses that prevents marital relations (such as permanent diseases).
- Harm that is unbearable in marital life.

4. Hanbali School:

- It permits judicial separation in several cases, including:
- Inability to provide maintenance.
- Prolonged absence of the husband without an excuse.
- Defects or diseases that prevent marital relations.
- Harm or desertion.

DISCUSSION

Judicial separation is considered permissible in all schools if one of the legitimate legal reasons is met, such as harm, inability to provide maintenance, absence, or the presence of defects and diseases. The Maliki School is considered the most comprehensive in dealing with these cases.

The Importance of judicial separation in achieving justice between spouses

There is no doubt that the Islamic religion is the religion of justice, inclusiveness and equality, and there is nothing that differentiates between rights and privileges. There is no evidence that the husband has more rights than his wife.

When God Almighty speaks about the issue of the family, He equates the two by saying: "And among His signs is that He created for you mates from among yourselves, that you may find tranquility in them, and He has put love and mercy between you. Indeed in that are signs for a people who give thought." (17:10), He created her for you from one of His ribs. (18:10), and in another verse: "And We created you in pairs." (19:10), the meaning is: males and females of the same sex, so that each of them may find tranquility in the other, so that there is love. And mercy, and from them comes offspring, and within this gratitude, the pleasure of marriage. It is known that marriage is a contract between a couple that aims to achieve a set of legal and social objectives that benefit the individual and society. Islamic law has made the objectives of marriage, as well as the objectives of separation, so that they are consistent with human nature, which is innate with desires and in which one of the five necessities is preserved, which are (religion, soul, offspring, money, and mind).

When marriage occurs and there is no compatibility between the two, which does not match the case of divorce, there must be a way to separate them, so what is called judicial separation was found. Therefore, separation has multiple importance, but the most important of them is the absence of the objectives of marriage. There are several objectives of marriage, and we summarize them under two necessary objectives on which several basic objectives are built, which are:

A- The absence of legal objectives: It comes within the framework of the necessary legal objective, which is to preserve the offspring, and they are multiple.

When this objective is absent, separation becomes necessary, such as:

B- The death of marital relations: The break in relations is to achieve chastity and purity, because marriage is a means It is permissible to satisfy the sexual instinct specified by Sharia, and to protect the soul from falling into forbidden things. When this cohabitation is absent, there is no need to bring them together, so separation is the solution if it is for a divorce of stumbling blocks.

C- Lack of family care: The fruit of marriage and its first softness is building a family, which is based on love and harmony between the spouses. If this family is absent, there will be oppression and injustice to the relationship between them.

D- Lack of affection and mercy: It is the basic characteristic that the Lawgiver, Glory be to Him, mentioned to encourage marriage by saying: (That you may find tranquility in her, and He has put between you affection and mercy).

2-Principles of Jurisprudence and its Rules Influencing Judicial Separation

Principles of Jurisprudence and their Impact on Judicial Rulings

The principles of jurisprudence are the basic theoretical form on which judicial rulings are based, which provides flexibility and balance between legal texts and the requirements of reality, especially in cases of judicial separation. The principles of jurisprudence help the judge issue rulings that achieve justice according to Islamic law, taking into account the individual and social circumstances of each case. If we go back to the issues of judicial separation between spouses, we find the role of the principles of jurisprudence in several aspects, namely: 1- In the original legal rulings: A- The Holy Quran: It is the primary source of the judge's ruling, and the judge applies the Quranic ruling in a manner consistent with contemporary reality, circumstances and developments. One of the examples of the judge's application is in the wife's maintenance, which is the issue of maintenance for the wife. The judge refers to the Holy Quran regarding the obligation of maintenance, as evidenced by the Almighty's saying {Mothers may breastfeed their children for two complete years for whoever desires to complete the nursing. Their provision is for his child, and the same is due to the heir. But if they both desire weaning by mutual consent and consultation, there is no blame upon them. And if you wish to have your children nursed, there is no blame upon you as long as you pay what you have given in an acceptable manner. And fear Allah and know that Allah is Seeing of what you do.}.

And based on it, the ruling is derived from it, and reliance on it is represented in several basic aspects:

The first aspect: In deriving the ruling: Where it is based on the Qur'anic text, especially when some of its verses are clear and direct, such as the verses of inheritance in Surat An-Nisa and the verses of divorce in Surat At-Talaq, an example of Which is the Almighty's saying: {And if you fear a breach between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Aware.}.

The meaning: The permissibility of judicial separation, in the case of failure to provide for the wife, based on this text, but the most accurate is the apparent meaning of the

text, which is what he went to, and the saying of the Hanbalis, and the Zahiris.

The second aspect: In interpretation: The judge may need to interpret the Quranic text, and apply it to contemporary cases if it contains a general ruling, or its legal purpose. An example of this is the verse ((And if you fear a breach between them, then send). The meaning: This verse needs an interpretation and interpretation that the judge must refer to, such as referring to the Qurtubi interpretation that the Almighty's saying ((And if you fear a breach between them, then send).

It calls for the judge's intervention to reform the matter, and there is no separation except in case of necessity. This is what the majority of Hanafis, Malikis, Shafi'is, Hanbalis, and Zahiris went to.

The third aspect: Weighing between the evidence: The judge must need more than one piece of evidence, and combining these pieces of evidence and weighing them must be referred to the Qur'an, considering it the strongest, most influential, and most important evidence. An example of this is combining the previous verse ((And if you fear a breach between them, then send (your wives))). and the verse ((And do not keep them, to cause them harm)).

The point of evidence: The two verses must be combined, to confirm that keeping them with harm is forbidden.

The fourth aspect: Referring to the objectives of Islamic law: Taking into account the objectives of Islamic law derived from the Qur'an, or the Prophetic hadiths, whether they are statements, words, or actions, when issuing a ruling. These objectives are: achieving justice, preserving rights, and bringing benefit to the individual. They combine them with justice and equality, and achieving the principle of generality.

The fifth aspect: General rules: The relationship between the Qur'an and the judiciary is the relationship between a teacher and his student. The judge must be inspired by the general rules required by the important sources of Islamic law.

The Zahiris rely on the apparent texts and reject analogy or reform, but they can look at the texts that are directly consistent with the objectives.

Examples of this include relying on texts that urge good treatment, which may lead to separation when there is harm ().

The second requirement: The jurisprudential rules affecting judicial rulings.

1. Istihsan, as a jurisprudential principle, allows the judge to bypass analogy in favor of a more just ruling based on interest or necessity. We see that the Hanafis take into account the objectives of Sharia, such as preserving the family and warding off harm, and they rely on istihsan, which is a type of consideration of

objectives. For example: In the case of severe harm, the judge may permit separation based on achieving the wife's interest and warding off harm.

2. The sent interest: The sent interest is used in some cases that require achieving a public benefit or warding off corruption, especially in cases that may not be covered by specific texts, but to justify separation if the continuation of the marriage harms one of the parties or the children, the Hanbalis rely on objectives through istihsan or the sent interest in cases where there is no explicit text, for example: judicial separation due to the wife's harm is considered an application of the objective of preserving the soul and warding off harm .
3. Blocking the means: The Malikis rely heavily on blocking the means and the public interests, which are tools that aim to achieve the objectives of Sharia. For example: If the continuation of the marriage leads to serious harm, the judge can rule for separation to prevent corruption and achieve the interests of both parties.
4. Analogy: In some cases, the judge may not find an explicit text that addresses the specific case. Here comes the role of analogy, which is one of the tools of the principles of jurisprudence, where the judge compares an unstated case to a stipulated case. The Shafi'is take into account the objectives of Sharia by analogy to the texts to achieve the legitimate interests. For example: If separation leads to removing harm and preserving dignity, the judge rules on it to achieve these objectives.
5. Custom: Custom has a place in the principles of jurisprudence and is taken into account in judicial rulings. Local or temporal custom can affect the interpretation of Sharia texts and their application to separation cases. Among the schools of jurisprudence, the Maliki school is the most reliant on custom as one of the sources of legislation. The Malikis consider custom, whether general or specific, and consider it complementary to the legal texts in matters in which there are no explicit texts, and they consider it a jurisprudential rule based on (custom as a ruling).

The goal of relying on custom is to achieve the interest of people and take into account changing conditions and circumstances , for the Hanafi: they also take custom, but to a lesser degree than the Malikis, and they consider it part of the preference, and the Shafi'is and Hanbalis: they take custom within a narrow scope, when it does not conflict with the texts, and the Zahiris: they do not take custom, as they rely only on the apparent legal texts and reject other sources such as custom.

- In cases of separation due to harm, the judge relies on the jurisprudential rule "no harm and

no harm”, which is one of the fundamental principles derived from the Prophetic hadith.

- In cases of long absence of the husband, resort to the legal texts and interpret them through the rules of the principles of jurisprudence, such as achieving the interest and preventing harm from the wife.

Chapter Two: Types of Judicial Separation and its Jurisprudential Rulings

There are basic jurisprudential rules that jurists rely on, and they differ in their application based on the jurisprudential schools. I will mention the jurisprudential rules and the opinions of jurists from the four schools (Hanafi, Maliki, Shafi'i, Hanbali, and Zahiri), as the jurisprudential rules play an essential role in the judicial separation of spouses in Islamic jurisprudence. These rules help judges make decisions based on Sharia principles when considering cases related to disputes between spouses that may lead to separation.

Section One: Separation due to harm

First requirement: The concept of harm in jurisprudence:

- Definition of harm:

Harm in the language: It is the opposite of benefit, and it was said that harm harms him, meaning that he caused him harm that he dislikes, and the letters Dād and ra are one root that indicates bad condition and its severity,

Harm in jurisprudential terminology: There are several definitions of harm among jurists:

- According to the Hanafis: It is what leads to harm or injustice in intercourse, and the judge must remove it.
- According to the Malikis: It is what harms a person in his body, money or freedom, and it has come in the Sharia to remove harm and repel it from the Muslim.
- According to the Shafi'is: Harm is everything that leads to harm or dislike, and the Sharia has ordered its removal, to provide comfort and security among people.
- According to the Hanbalis: Harm is everything that harms a person, whether in his person, his money or his honor, and it must be removed if possible.

The second requirement: Types of harm leading to judicial separation:

There is established evidence from the Qur'an and Sunnah that separation is permissible if harm is proven between spouses, regardless of its types, and the most important of which is the saying of the Messenger of Allah, peace and blessings be upon him: (There is no harm or reciprocating harm), which is the basis of the jurisprudential rule that stipulates the removal of harm.

There are types of harm that are considered legitimate reasons for separation between spouses, and they are used in Sharia courts as evidence when considering separation cases, and this harm cannot be removed except by separation.

The types of harm that can lead to separation include:

- Physical harm: This is direct physical harm such as beating or physical abuse.
- And its ruling: If it is proven that the husband physically assaults his wife, she has the right to request separation.
- Editing the disputed issue: The jurists agreed that if physical harm is proven, such as abuse or beating, then it is considered a reason for separation, but they differed on whether this reason (physical harm) requires witnesses or not, and they have two opinions:
 - The first opinion: When physical harm is proven, such as abuse or beating, then it is considered a reason for separation, and does not require witnesses, and is sufficient with indications or evidence, which is the opinion of the Malikis, Shafi'is, and Zahiris.
 - The second opinion: When physical harm exists, then the testimony of witnesses is necessary, so that the judge may rule for separation, and this is what the Hanafis and Hanbalis went with.

EVIDENCE

The proponents of the first opinion cited:

1. The textual evidence:

A-The Almighty's saying: {And do not keep them, to harm them, in order to transgress}

2. The evidence: It is a prohibition against harming the wife, including physical harm.

B- ((It is the saying of the Prophet, may God bless him and grant him peace: "He who does not show mercy will not be shown mercy", indicating that mercy is obligatory in intercourse, and that physical harm contradicts that.

3. The rational evidence:

- Physical harm leads to harm to the soul, and it is forbidden by Sharia because it contradicts the preservation of the soul, one of the five necessities in Sharia.
- Physical harm disrupts the marital relationship and contradicts the objectives of Sharia in preserving life and dignity.
- Physical harm contradicts human nature, which tends toward mercy and kindness.

Evidence of the second opinion:

- The Almighty's saying:** {Either keep her in an acceptable manner or release her with good treatment}.

2. **The evidence:** It indicates that keeping her must be in an acceptable manner, and physical harm contradicts what is acceptable, and there is no acceptable treatment without continuous intercourse.
3. **They cited the hadith of the Prophet, may God bless him and grant him peace:** (“Your blood, your wealth, and your honor are sacred to you”, agreed upon, the evidence: Thus, honor cannot be violated in any case... your honor is sacred to you.
4. **Rational evidence:**
 - A- The body is a trust that must be preserved, and physical harm destroys the family unit and leads to continuous harm.
 - B- Physical harm leads to alienation and hatred between spouses, which threatens the continuation of married life, and work must be done to continue married life if possible.
 - o Psychological harm: It is the psychological harm that befalls a person and affects his psychological state, which is a justification for separation.

Editing the place of types:

Scholars agreed that psychological harm is a reason for separation between spouses, but they differed on the type of harm according to the continuity of the harm and its severity into two opinions:

The first opinion: Psychological harm is a reason for separation regardless of whether the harm continues or not, which is the opinion of the Malikis, Shafi'is, and the opinion of the Hanbalis.

The second opinion: It is required for psychological harm to be proven and to continue for a long period, in order for it to be accepted as a reason for separation, which is what the Hanafis went for, and the opinion of the Hanbalis.

Evidence:

Evidence of the proponents of the first opinion:

1- Narrative evidence:

- A- The Almighty said: {And live with them in kindness}.
- B- The Prophet's saying, peace and blessings be upon him: “Whoever believes in Allah and the Last Day, let him not harm his neighbor”, agreed upon.

The meaning of the evidence: If it is not permissible to harm the neighbor, then the wife is more deserving of not being harmed.

- C- The hadith of the Prophet, may God bless him and grant him peace: “Fear God in dealing with women”.

2- Rational evidence:

1. Psychological harm affects the psychological health of the wife, and it is one of the harms that

must be removed because it disrupts her normal life.

2. Psychological harm leads to the absence of peace and tranquility in the marital relationship.
3. Psychological harm causes continuous suffering that affects the stability of marital life, which requires intervention to remove it.

Evidence of the proponents of the second opinion:

A- The Almighty's saying: {And live with them in kindness}.

The meaning of the evidence: (It is also known that the wife should respond to her husband in the same way that he responds to her, and that he should respond to her in the same way that she responds to him. So if we assume that he has fallen short in his right to her, then she has the right to fall short in his right to live together on both sides, and he does not have the right to demand from her his full right despite his falling short; firstly because God said: “Live with them,” and living together is a mutual action that requires the presence of living together on both sides).

Discussion and preference:

The Hanafis believe that harm between spouses is not a sufficient justification for separation; because harm can be treated in other ways, such as the judge ordering the husband to treat them well. The Hanafis rely on the Almighty's saying: “And live with them in kindness”.

The Malikis believe that separation is permissible if the wife suffers physical or psychological harm from the husband, including beating and desertion without justification. Harm is defined as anything that causes harm to the wife.

- Discussion of the evidence: This opinion is supported by the hadith of the Prophet (peace and blessings of God be upon him): “There should be neither harm nor reciprocating harm,” narrated by Ibn Majah and Imam Ahmad in his Musnad.
- Financial harm: The continuous lack of support from the husband creates justified harm that warrants separation.
- Editing the disputed area: There is no disagreement among the jurists that financial harm necessitates separation, and there is no disagreement among them that not spending is considered harm, but the disagreement among them is whether the spending is continuous or not?

They are of two opinions:

The first opinion: that not spending, simply by not spending, is considered harm that necessitates separation, which is what the majority of the Malikis, the Shafi'is in one of the opinions, the Hanbalis, and the Zahiris went to.

The second opinion: that it is the harm that necessitates separation, and it is required that the lack of spending be continuous, i.e. it is required that there be continuity (i.e. for a long period) in not spending, so that there is a justification for separation between the spouses, which is what the Hanafis went to, and a statement of the Shafi'is.

Evidence:

Evidence of the proponents of the first opinion:

1- The textual evidence:

- The Almighty said: {Then keep her in good faith or release her with good treatment}.
- The meaning of the evidence: (If he is unable to keep her in a good manner, then divorce is obligatory. If he does not leave her, then the judge separates them, because God Almighty has made that for her, because whoever is given a choice between two things and is unable to do one of them, then he must adhere to the other).

2- Rational evidence:

1. They said: (Because she has the right to leave him in the case of *ila'* and impotence and their harm is less than the harm of maintenance, then not providing maintenance is more appropriate).
2. (Because the inability is on the part of the husband and has not been realized).

Evidence of the proponents of the second opinion:

1- The textual evidence:

- A- The Almighty's saying: {And whoever is restricted in his provision - let him spend from what God has given him. God does not charge a soul except [with that within] what He has given it. God will bring about, after hardship, ease}.

The meaning of the verse: (This verse indicates that the inability to understand does not necessitate separation, because it informed us of the obligation of spending on what one is able to do and can spend, so it indicates that it is not obligatory for one who is not able to do it).

- A- And the Almighty's saying: {Allah does not charge a soul except [with that within] what He has given it}.
- B- The meaning of the verse: (It also indicates this because it informs that one who is not able to do it is not charged with spending, and if he is not charged with spending in this case because Allah Almighty informs him that the obligation to spend it has been removed from him, it is not permissible to separate them for the sake of what he is not obligated to spend).
- C- The Almighty's saying: {Then either keep [her] in an acceptable manner or release [her] with good treatment}.

The meaning of the evidence: (If he is unable to keep her in a good manner, then divorce is obligatory. If he

does not separate from her, then the judge separates them, because God Almighty has made that for her, because whoever is given a choice between two things and is unable to do one of them, then he must adhere to the other).

2- Rational evidence:

A- They said: (Because she is not yet obligated, so if he is not separated for the past obligation, then it is more likely that it is not obligatory for the future).

B- Because it is impossible to enjoy her due to impotence, then she is not entitled to maintenance.

- **Sexual harm:** Any sexual impotence or abstinence from intercourse is considered harm that justifies separation.
- **Editing the disputed issue:** There is no disagreement among scholars that the issue of sexual impotence, or abstention from intercourse by one of the spouses, is an important reason for separation between the spouses, but the disagreement occurred, on whether this harm needs to be proven, or is it required to be continuous or not, and they are on three opinions:

The first opinion: that separation due to sexual harm requires proof, or abstention for a long period, which is what the Hanafis went to.

The second opinion: that mere sexual impotence is considered a reason for separation between the spouses, which is what the Malikis, Shafi'is, and Zahiris went to.

The third opinion: that abstention or continuous sexual impotence justifies the request for separation, which is the doctrine of the Hanbalis.

Evidence:

Evidence of the proponents of the first opinion:

1- The textual evidence:

- A- The Almighty's saying: {Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment}.

The meaning of the evidence: It indicates that keeping them should be in a good manner, or they should release them with kindness, and keeping them in a good manner cannot be without intercourse, nor is it good without intercourse and continuous companionship.

- B- According to the hadith of the Prophet (peace be upon him): "There should be neither harm nor reciprocating harm".

The meaning of the evidence: If the four seasons (summer, winter, spring and autumn) pass by the man and nothing happens from him, then the woman may be harmed because she stayed with her impotent husband for a period.

2- Rational evidence:

- (Because if the impotent person was young, he would wait until he reached puberty).

Evidence of the proponents of the second opinion:

- Rational evidence:
- Because sexual harm leads to not enjoying him or her, (because the purpose of marriage is enjoyment, and that does not exist).
- Because his impotence has become clear to her through circumstantial evidence and length of practice, unlike the witnesses; they do not know what she knows from him, and this is like if she claims that he intended divorce with some insinuations and he denied and refused, the woman swears.

Evidence of the proponents of the third opinion:

The textual evidence:

- The hadith of the Prophet, may God bless him and grant him peace: (There is no harm or reciprocating harm).
- The evidence: (The woman is harmed by waiting without any real benefit, and the harm must be removed).
- The rational evidence:
- (Because abstaining from intercourse is caused by impotence).

Religious harm: is the commission of actions by one of the spouses that conflict with religion, which is considered harm that justifies separation.

Resolution of the disputed point: The scholars agreed that the harm committed is in conflict with the provisions of Sharia, and necessitates separation, but they differed in the strength and type of harm into three opinions:

- The first opinion: Any harm that leads to the commission of major sins or transgressions necessitates separation, which is the opinion of the Hanafis.
- The second opinion: Behavior that strongly contradicts religion justifies separation, which is what the Malikis, Shafi'is, and Zahiris went with.
- The third statement: The behavior of the one who opposes religion justifies separation if its harm is proven, and this is the doctrine of the Hanbalis.

Evidence:

Evidence of the proponents of the first statement:

1- The textual evidence:

- A- The Almighty's saying: {And Allah will never grant the disbelievers a way over the believers}.
- B- The hadith of the Prophet, may God bless him and grant him peace: "Whoever changes his religion, kill him".

2- Rational evidence:

- A- Religious harm affects beliefs and faith, which necessitates separation in the event of corruption of religion.

- B- (Because guardianship between them is cut off by the difference of the two barriers; therefore, inheritance does not occur; unlike the House of Islam, which is the House of Rule, so by the difference of the barrier the house does not differ).

Evidence of the proponents of the second statement:

- Rational evidence:
- Religious harm leads to the corruption of religion and morals, which is what must be addressed.

Evidence of the proponents of the third opinion:

1- The textual evidence:

- A- The Almighty's saying: {And God will never grant the disbelievers a way over the believers.}.
- B- His saying - may God bless him and grant him peace -: (Islam is superior and nothing is superior to it (.

2- Rational evidence:

- (Allah has not given the disbelievers a way over the believers, and the marriage of a Muslim woman to a disbeliever gives him the greatest way over her by virtue of his guardianship over her).
- (Islam is superior and nothing is superior to it, and the marriage of a Muslim woman to a disbeliever leads to his superiority over her, by virtue of marital rights).
- (The marriage of a Muslim woman to a disbeliever is a means of embracing his religion by his influence on her).
- (The marriage of a Muslim woman to a disbeliever leads to the children embracing disbelief because of his influence on them, and his raising them on it).

Discussion and Preference:

Through the harm that befalls one of them, and we see that there is a recent agreement among the people of knowledge that it is necessary to differentiate in cases of harm, whether this harm is physical, psychological, financial, or harm that causes the violation of the sanctity of the true religion, and we have seen through the presentation of evidence that the majority agree Jurists agree that harm is a reason for separation, but in the case of harm and separation before the judge, the Malikis were more flexible than the Hanafis because the Malikis consider that mere harm is a convincing reason for separation, while the Hanafis have narrowed the scope, as it must be convincing harm proven by evidence and indications.

Differentiation For Non-Spending and Insolvency

First requirement: Definition of alimony and its ruling.

First: Definition of alimony

1. In the language: Alimony is taken from the root "nafaqa", and means what is spent to meet basic

needs such as food, clothing and housing. It is said: "Anfaqa al-mal" meaning he spent it, and "Nafaqa al-mal".

2. In Islamic jurisprudence: Alimony in terminology: is the money required to secure essential needs such as food, clothing and housing for persons who are entitled to alimony according to the provisions of Sharia, such as the wife, children and relatives.
3. In Iraqi law: Alimony is defined as the financial obligation imposed on a person to cover the necessities of those who are obligated to pay alimony, whether due to marriage, kinship, or legal obligation. The Iraqi Personal Status Law No. (188) of 1959 organized the provisions of alimony in its articles (57-60).

Second: The ruling on the obligation of maintenance and its legal evidence:

1. From the Holy Quran:
 - Allah the Almighty says: {Let a man of wealth spend from his wealth}, which is evidence that maintenance is determined according to the husband's financial situation.
 - Allah the Almighty says: {And the father of the child shall bear the cost of their food and clothing on equitable terms}, indicating the obligation of maintenance on the wife and children.
2. From the Sunnah of the Prophet:
 - The hadith of the Prophet (peace and blessings of Allah be upon him): "If you leave your heirs rich, it is better than leaving them dependent, begging from people", indicating the importance of spending on one's family.
 - The hadith of the Prophet (peace and blessings of Allah be upon him): "If a Muslim spends on his family, expecting reward from Allah, it is considered charity for him," agreed upon.
2. From the consensus: The schools of jurisprudence agreed that the husband must provide for his wife and children, as well as for needy relatives in the event of inability to earn a living and lack of a source of income.
3. Maintenance in Iraqi law

The Iraqi Personal Status Law has organized maintenance within its articles (57-60), and its most prominent provisions are:

1. Maintenance of the wife:
 - Maintenance is obligatory on the husband towards his wife in the event of a valid marital relationship.
 - Maintenance includes: food, clothing, housing, and daily life requirements.
 - If the wife refuses to live with her husband without a legal justification, she is not entitled to maintenance.

2. Maintenance of relatives:
 - Maintenance is obligatory on relatives (such as parents and children) if they are unable to work.
 - The provider must be able to provide.
3. Mandatory maintenance:
 - The beneficiary may file a lawsuit to claim maintenance if the provider refuses to pay it.

The third requirement: Conditions for maintenance that must be met:

- A. Conditions for maintenance in the schools of jurisprudence:
 1. Hanafi school: Hanafis believe that maintenance is obligatory in a valid marriage, provided that the wife obeys and allows herself to the husband. Maintenance is also obligatory for the ancestors (fathers and mothers) and descendants (sons) if they are insolvent.
 - Legal evidence: The Almighty says: {Men are the maintainers of women}, as the verse indicates the obligation of the man to maintain his wife.
 2. Maliki school: According to the Malikis, maintenance is obligatory for the husband as soon as the valid contract is concluded, whether he has consummated the marriage or not. Maintenance is permissible for relatives if they are in need.
 - Legal evidence: The hadith of the Prophet (peace and blessings of Allah be upon him): "And they have a right over you to provide for them and to clothe them according to what is acceptable." [Narrated by Muslim].
 3. Shafi'i School: The Shafi'i school stipulates that the wife must be obedient and allow her husband to have intercourse with her, while the relatives must be able to provide for them if they are unable to earn a living.
 - The legal evidence: The Almighty says: {And the father of the child shall provide for them and clothe them on equitable terms}, as the verse clarifies the husband's responsibility for the expenses of his wife and children.
 4. Hanbali School: The Hanbalis believe that the expenses are obligatory on the condition of a valid marriage contract and the wife enabling herself to the husband. As for the expenses of relatives, they are obligatory when there is need and inability to earn a living.
 - The legal evidence: The hadith of the Prophet (peace and blessings of Allah be upon him): "It is enough of a sin for a man to neglect those he is responsible for" [Narrated by Abu Dawud], which is an explicit text on the prohibition of refraining from providing for them.

B. Conditions of maintenance in Iraqi law with evidence

1. Valid marital relationship: Maintenance is not imposed unless the marriage contract is valid.
 - Legal evidence: Article (57) of the Iraqi Personal Status Law No. (188).
2. Need of the beneficiary: Maintenance is obligatory on relatives if the beneficiary is unable to earn and has no source of income.
 - Legal evidence: Article (59) of the same law.
3. Ability of the provider: The provider must be financially capable of providing maintenance.
 - Legal evidence: Article (60) of the law, which stipulates that the provider's condition must be taken into account when estimating maintenance.

Separation Due to the Husband's Absence or Imprisonment

The ruling on separation due to the husband's absence in Iraqi jurisprudence and law

First: Definition of the husband's absence

The husband's absence is his separation from his wife, whether by his will or for a reason beyond his control, which leads to the wife being harmed by this absence for a long period of time, causing her to lose her marital rights such as maintenance and intercourse.

Second: Types of absence and conditions for separation

A. The husband's absence due to travel or desertion:

- In Islamic jurisprudence: The jurists agreed that if the husband's absence results in apparent harm to the wife, she may request separation, based on the Almighty's saying: "And live with them in kindness".

It was reported from Omar bin Al-Khattab - may God be pleased with him - that he made the period of a woman's patience away from her husband four months.

- In Iraqi law: Article (43/1/A) of the Iraqi Personal Status Law No. (188) of 1959 stipulates that the wife may request separation if the husband is absent for a period exceeding two years without a legitimate excuse.

B. Absence of the husband due to imprisonment:

- In Islamic jurisprudence: Jurists believe that the wife may request separation if the husband's imprisonment is long and she is harmed by his absence, based on the jurisprudential rule: "Harm must be removed".
- In Iraqi law: Article (43/1/B) of the Personal Status Law stipulates that separation is permissible if the husband is sentenced to a custodial sentence of three years or more, and at least one year has passed since his imprisonment.

C. Absence of the missing husband:

Legal evidence:

A. The Holy Quran:

1. His saying "And live with them in kindness".
2. The Almighty says: "A mother shall not be harmed by her child".

B. The Sunnah of the Prophet:

1. The hadith of the Prophet, peace and blessings be upon him, about the wife of the missing person.
2. The hadith of Omar bin Al-Khattab about the period of patience of the woman.

C. Jurisprudential rules:

1. "Harm shall be removed.
2. "Hardship brings ease.

• In Islamic jurisprudence:

The Malikis made the waiting period four years, based on the hadith of the Prophet, peace and blessings be upon him: "The wife of the missing person shall wait four years, then observe a waiting period of four months and ten days".

Article (43/1/C) of the Personal Status Law stipulates that separation is permissible if the husband is missing for two years and his whereabouts are unknown.

Conditions for separation due to the husband's absence

General conditions:

1. Proof of absence by witness testimony or official documents.
2. Verification of material or moral harm to the wife.
3. The legal period specified according to the type of absence.

Special conditions for each case:

- Voluntary absence: Proof that the absence was without a legitimate excuse.
- Forced absence: Providing evidence of imprisonment or loss.

Issue: If the husband is absent from his wife for a period of time for any reason, whether it is intentional absence (such as *ila*) or unintentional (such as loss or absence due to urgent matters such as war and others), the wife may file a lawsuit for judicial separation to separate her from the husband on the grounds of depriving her of marital rights (such as cohabitation or spending) due to her husband's absence.

The jurists have two opinions on this: 1- The first opinion: The wife has the right to divorce on condition that the husband deliberately did so in his absence. However, if he did not do so intentionally, the wife is not permitted to file a lawsuit for judicial divorce unless she has certain knowledge of his death or the death of his peers who were with him when he was separated from his family. This was narrated on the authority of Ali ibn Abi Talib, Abdullah ibn Masoud, Hammad ibn Abi

Sulayman, and it is the Hanafi school of thought, and the preferred opinion among the Shafi'is. The Zahiris, Zaidis, and Imamis said the same. 2- The second opinion: The wife has the right to divorce if he deprives her for any reason, whether his absence was intentional or unintentional. This was narrated on the authority of the two Imams Omar ibn al-Khattab and Ali ibn Abi Talib, and it is the opinion of al-Hasan al-Basri, Saeed ibn al-Musayyab, Qatadah, al-Awza'i, al-Thawri, and al-Layth ibn Sa'd. This is the opinion of the Malikis and Shafi'is in one of the two opinions.

Evidence:

The proponents of the first opinion provided evidence:

1. [On the authority of Al-Mughira bin Shu'bah, who said: The Messenger of Allah, may Allah bless him and grant him peace, said: The wife of the missing person is his wife until the statement comes to her] Narrated by Al-Dar Qutni with a weak chain of transmission.
- b. On the authority of our master Ali, with a chain of transmission ending with him, he said: The wife of the missing person is a woman who has been tested, so let her be patient until the certainty of his death comes to her.

The proponents of the second opinion provided evidence: 1- The Almighty's saying {And when you divorce women and they have fulfilled their term, either keep them according to acceptable terms or release them according to acceptable terms. And do not keep them to harm them in order to transgress. And whoever does that has certainly wronged himself. And do not take the verses of Allah in jest. And remember the favor of Allah upon you and what He has sent down to you of the Book and wisdom by which He instructs you. And fear Allah and know.} {Allah is All-Knowing of everything}.

The Evidence: It is the Almighty's saying {So keep them in good faith or release them in good faith, and do not keep them to cause them harm in order to transgress}, as Allah Almighty has given husbands two ways towards their wives, either to keep them or release them, and this comes from the door of good treatment, but leaving the wife hanging, waiting for a missing person whose fate is unknown, is contrary to keeping them or releasing them.

The opinion of the law: The text of Article Forty-One of the Personal Status Law No. 188 of 1959.

The wife has the right to request separation, if one of the following reasons is available:

1. If her husband is sentenced to a penalty restricting freedom for a period of three years or more, even if he has money from which she can spend.
2. If the husband abandons his wife for two years or more without a legitimate excuse, even if the husband is known to reside and has money from which she can spend.

3. If the husband does not ask his wife who has not been consummated with for the wedding within two years from the date of the contract, and the husband's request for his wife's wedding is not taken into account, if he has not fulfilled her marital rights.

Discussion and Preference: -

Through the evidence from both sides, it appears that there is no definitive evidence of the necessity of separation, and in contrast, there is no definitive evidence of its prohibition, whether through hadiths or verses, but there is an urging to be patient because it is a type of trial as the Prophet (peace and blessings of Allah be upon him) called it, and perhaps what is meant by that is to avoid the consequences that follow separation from the idea of associating with someone else and then marrying him after the end of the waiting period, and the biggest problem is the return of the first husband after marrying the second, which leads to problems.

The Role of the Judiciary in Separating Spouses, and New Developments

Section One: Judicial Procedures

First Requirement: Judicial Procedures Related to Separation

Judicial procedures are an important step in ending the marital relationship when the reasons warrant it. The judiciary intervenes to resolve marital disputes according to legitimate and legal foundations that protect the rights of both parties.

1. **Filing the lawsuit:** Separation procedures begin when one of the spouses submits an official request to the competent court, which includes a statement of the reasons warranting separation, such as: (psychological or physical harm: such as insult, violence, or neglect, failure to spend, the husband's failure to provide the wife's basic needs, the husband's absence: the husband's absence from the home for a long period without an acceptable excuse).
2. **Investigating the lawsuit:** The judge verifies the validity of the claims submitted through:
 - Summoning the other party to hear his statements.
 - Presenting witnesses and evidence.
 - Legal evidence: The Prophet's saying, peace and blessings be upon him: "The burden of proof is on the one who claims, and the oath is on the one who denies", narrated by Al-Bayhaqi).
3. **Mediation and Reconciliation:** The court attempts to reconcile the spouses before issuing a ruling, based on the Almighty's saying: "And if you fear a breach between the two, send an arbitrator from his people and an arbitrator from her people.

4. **Issuing the ruling:** If reconciliation is not possible and the evidence is proven, the judge issues a ruling for separation.
 - The separation of the spouses is ruled upon if:
 - The confirmed case of harm.
 - The husband's absence for a long period (two years in Iraqi law).
 - The husband's inability to provide for his financial situation after verifying his financial status.
5. **Implementing the ruling and protecting rights:**
 - The separation ruling is documented.
 - The court rules on the wife's rights, such as the deferred dowry and alimony.
 - The rights of the children, such as custody and alimony, are taken into account.

The second requirement: Judicial ijthad and its role in Sharia

1. The concept of judicial ijthad: Judicial ijthad means the judge's deduction of the Sharia ruling in new cases or cases in which the opinions of jurists differ.
2. The role of the jurist judge:
 - The judge is responsible for finding a legal solution that achieves justice between spouses.
 - Ijthad is used in cases that are not clearly stated in Sharia texts or in the law.
 - Example: The judge may use his own efforts to estimate the duration of the husband's absence based on the circumstances of each case.
3. Judicial ruling as a source:
 - Judicial rulings that rely on ijthad become a source to be referred to in similar cases.
4. Adapting to the times: Judicial ijthad aims to reconcile Sharia rulings with modern legal culture to ensure the achievement of justice.
 - The rule: "Whatever duty is necessary for fulfilling is itself a duty".

Section Two: A Comparative Study between Jurisprudence and Law in Separation Cases

First Requirement: Similarities between Jurisprudence and Law

1. The Purpose of Separation:
 - Jurisprudence and law seek to end the marital relationship when life between the spouses becomes impossible.
 - Sharia evidence: "Then either keep them in an acceptable manner or release them with kindness".
2. Separation due to harm:
 - Jurisprudence: permitted separation if one of the spouses was exposed to material or moral harm.
 - Iraqi law: Article (40/1) stipulated separation upon proof of harm.

3. Waiting period for the missing person:
 - Maliki jurisprudence: The husband's absence is expected for four years before ruling his death, and there is evidence for that.
 - Iraqi law: Article (43/1) stipulated that a period of two years is sufficient to prove the husband's disappearance.

The second requirement: Differences between jurisprudence and law

1. Separation due to absence:
 - Jurisprudence: The schools of thought differed regarding the duration of the husband's absence:
 - Hanafi: No specific period is specified.
 - Maliki: 4 years.
 - Iraqi law: Article (43/1), specifies the duration of absence as only two years.
2. Separation due to sexual impotence:
 - Jurisprudence: Most schools of thought allowed the wife to request separation if the husband was sexually impotent, with differences regarding proving this.
 - Iraqi law: Article (40/2) stipulates separation if the impotence is permanent and incurable
3. Separation due to psychological harm:
 - Jurisprudence: Requires the presentation of witnesses to prove psychological harm.
 - Law: Relies on medical reports or documented certificates, which speeds up the process.

The third section: The new effects of separation between spouses

When separation occurs between spouses, legal and legitimate effects appear on both parties and on the family in general. The new effects include the following:

First requirement: Effects on the wife

1. End of the marital relationship between the spouses:
 - Through separation, the marital life officially ends, and the wife becomes considered divorced.
 - Legal evidence: "Then either keep her in an acceptable manner or release her with good treatment".
2. Obligation of waiting period:
 - The wife must adhere to the legal waiting period according to the type of separation:
 - Three menstrual periods for a non-pregnant wife.
 - Until delivery if she is pregnant.
 - Evidence: "Divorced women shall wait, concerning themselves, three menstrual periods".
3. The wife is entitled to the deferred dowry and maintenance:
 - She is entitled to all the dowry, and if the dowry is deferred, the wife has the right to claim it after separation.

- She may be awarded maintenance during the waiting period and maintenance for the children, if any.
 - In Iraqi law, this is implemented according to Articles (58) and (59) of the Personal Status Law.
4. Custody:
- The wife may obtain the right to custody of young children according to Sharia and law.

Second requirement: The effect on the husband

1. The husband is obligated to provide maintenance:
 - The judge obliges the husband to pay maintenance during the waiting period and maintenance for the children if they are in the mother's custody.
 - Iraqi law stipulates this to guarantee the rights of the wife and children after separation.
2. The husband loses marital authority: The husband loses his authority over the wife once the separation occurs, and the relationship between them becomes governed only by the provisions of maintenance and custody.
3. Financial obligations:
 - He may bear financial compensation according to the law, if the husband harms the wife.

The third requirement: Effects on children

1. Who has custody:
 - Custody is the right of the best of the parents to ensure the children's interest, and is often granted to the mother in the child's early years.
 - Legal evidence: "You are more entitled to it unless you remarry".
2. Maintenance:
 - The father is legally and religiously obligated to provide the children with food, drink, clothing, and education.
 - Article (57) of the Iraqi Personal Status Law stipulates the protection of children's rights from maintenance.
3. Psychological and social impact:
 - Since separation negatively affects the psychological and social stability of children, which requires legal procedures to ensure a safe environment for them.

Fourth requirement: Societal impacts

1. High divorce rates:
 - Increasing cases of separation contribute to high divorce rates, leading to changes in the structure of the family and society.
2. The need for institutional support:
 - The increase in cases of separation highlights the need for social institutions that provide psychological and legal support to those affected.
3. The impact of customs and traditions: Some societal customs may lead to additional pressures on

divorced women, which requires a greater role for laws to protect them.

CONCLUSION

Through this research, it was concluded that judicial separation is an important legal and legitimate tool for achieving justice and removing harm in marital relations. Islamic jurisprudence, with its rules and principles, represents a basic reference in organizing separation rulings, and is characterized by the flexibility that allows it to be applied in various circumstances and times. As for Iraqi law, it has worked to develop legislation to be consistent with the spirit of Sharia and meet the requirements of the era, which made it more capable of resolving family disputes in an organized and practical manner.

Judicial diligence also played a vital role in addressing emerging issues that were not mentioned in detail in the Sharia texts, which contributed to strengthening the role of the judiciary as a guarantor of justice between spouses. However, judicial separation has psychological and social effects that extend to children and society, which requires more efforts to support the disintegrated family and reduce the repercussions of family disintegration.

Through the study, we concluded that judicial separation is a very important field in Islamic jurisprudence and Iraqi law, due to its role in organizing marital relations and achieving the objectives of Sharia in removing harm and preserving the family. With the development of society and the increase in family challenges, there has become an urgent need to activate the role of judicial diligence, develop legislation, and enhance community support to ensure the achievement of social justice and family stability.

Recommendations and Suggestions:

1. **Strengthening the role of family reform committees:** Establish specialized committees that work to try to reform marital relations before resorting to the judiciary, based on the Almighty's saying: "Then send an arbitrator from his family and an arbitrator from her family" (An-Nisa: 35).
2. **Developing legal legislation:** Reviewing the provisions of the Iraqi Personal Status Law to ensure their compatibility with modern developments, while preserving the objectives of Islamic law.
3. **Training judges on family cases:** Organizing training courses for judges on Sharia rulings and judicial diligence related to separation, to ensure the achievement of prompt justice.
4. **Raising awareness among spouses about their rights and duties:** Intensifying awareness campaigns for those about to get married to explain their legal and religious rights and duties, which contributes to reducing disputes.

5. **Developing psychological and social support for affected families:** Establishing specialized centers to provide psychological and social support to spouses and children affected by judicial separation, to reduce the negative effects on the family and society.
6. **Conducting statistical and field studies:** Supporting scientific research to conduct field studies on the reasons for the rise in judicial separation cases, and proposing practical solutions to address them.

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