

## **The right of Dowry Remission: Study in Islamic jurisprudence and Arab systems**

**By**

**Dr. Yahya Mohammed Al-Khalilah**

Associate Professor at the Faculty of Sharia and Religion King Khalid University, Saudi Arabia

Email: [yalkhlaylh@kku.edu.sa](mailto:yalkhlaylh@kku.edu.sa)

### **Abstract**

All Praise be to Allah, and prayers and peace be upon His Prophet, Muhammad bin Abdullah, and the peace upon His family and companions, and those who followed his guidance and his path until the Day of Judgment. The Islamic law is still and will remain a complete Sharia, inclusive of all human requirements, and regulating the lives of individuals and groups. One of the characteristics of Islamic law is its honouring of women and preserving their rights. It obliges them to have marital rights, the most important of which is the right of the dowry (money gifted by a bridegroom to his wife on their marriage). For this reason, the dowry is considered one of the wife's financial rights over her husband and one of the effects of the marriage contract. According to the Sharia, the woman has the right to pardon all or part of her dowry or donate it after receiving it. Likewise, the right to pardon in Arabic rules is left to the wife only, which indicates that she is the owner of the right. In forgiveness also, guardians have no authority to pardon or degrade the dowry approved by law for women. That is contains the most important terms related to the subject of the research, the legality of the dowry and its governance in Islamic law and Arabic rules and the dowry types and the right to pardon in Islamic law and Arabic rules.

**Keywords:** The right, Dowry, Remission, Islamic and Jurisprudence.

### **Introduction**

Praise be to Allah alone, and may prayers and peace be upon those who have no Prophet after him, our Prophet Muhammad bin Abdullah, his family and companions, and those who follow Allah and follow His guidance until the Day of Judgment and after the Islamic law includes a statement of what is important to individuals and societies. She was distinguished by honouring women and preserving their rights, so it imposed marital rights, the most important of which was the right of dowry, one of the factors that the marriage contract is based on. The dowry is a basic and legitimate right of the wife, which Almighty Allah approved in the Quran and the Prophet Sunnah( practices); peace be upon him, as it is a gift from God Almighty to women as an exclusive grant. It is not permissible to collude on leaving it to establish a marriage without a dowry. The husband must pay the money as soon as the contract is carried out. It is obligatory in the contract.

The custodians who have some right to the components of the marriage are involved with this marriage, as they may be harmed by the lack of some of the pillars or conditions of the marriage contract, such as the inefficiency of the husband, or the lack of dower of the like, etc. They then have the right to refuse the marriage contract in which some conditions are considered or accepted and waive their right to do so.

In Arab systems, dowry is a right due to women because they are influenced by Islamic law and are explicitly taken from it. All of them agree that the money, work or benefit paid by men is a right for women to dispose of it as they wish, simply by the right contract, and there is no limit to it.

A woman has the right to pardon the dowry approved for her by law, as she owns it and has the right to dispose of it in fulfilment, disclaimer, pardon and lenience. The jurisdiction has given her the right to pardon her dowry or some of it or give it after she has received it by law.

Likewise, in Arab systems, the right to pardon is left to the wife only, which indicates that she has the right to pardon as well and that the guardians have no authority to pardon or degrade the dowry approved by law for the woman because it is a right exclusively for her, and pardon it is a kind of charity if the husband is insolvent, and whether known or unknown.

The importance of this topic lies in the statement of the right of the dowry to women and that it is a duty of the man and one of the effects of the marriage contract. Proof of the woman's right to pardon the dowry approved by law, as she owns it and has the right to dispose of it in fulfilment, disclaimer, pardon and lenience. Declaring who determines to undertake the marriage contract and who has the right to pardon the dowry in Islamic law.

In addition, the research subject is considered one of the important issues about marital rights, the most important of which is the right to dowry. Demonstrate the ability of Islamic law and Arab regulations, in general, to deal with marital problems, including financial rights relating to women, especially the right to a dowry. Clarifying the types of dowry in Islamic law and Arab regulations and indicating the right of women to pardon it. This research reveals that Islamic law has provided just and comprehensive solutions to women's right to pardon some or all of their dowry.

## **The problem of the study and its questions**

Examining the right to pardon the dowry in Islamic law and Arab regulations is important to research that addresses a sensitive issue related to marital rights.

But this subject has several questions, the most important of which are: Is the right to pardon the dowry an absolute right of the woman, or does it interfere with the right of the custodian? Does a woman's remission of her dowry detract from her worth? And is the right to pardon the dowry, which is accepted to be waived legally and lawfully? Definition of the system that dealt with the question of the right of pardon under consideration.

## **Research Objectives**

1. Declaring women's right to the dowry in the Islamic law and the Arab regulations, its rules, pillars and types.
2. The right to pardon the dowry in Islamic law and Arab regulations is reserved for the wife only, and she has the right to pardon it. The custodians have no authority to pardon or degrade the dowry approved by law for women.
3. The need of Islamic society, in particular, and humanity in general, to know the rights of women that Islam has taken into account by stating the opinions of scholars regarding the dowry and its provisions. It is one of the most important legitimate issues related to the stability of the family.

4. Demonstrating the relationship between the provisions of Islamic law and the Arab regulations in authority to pardon the dowry approved by the Sharia for women and the legality of waiving it.

## **Theoretical framework**

### ***Definition of the right linguistically***

Right: Haa(ح) and Qaf ( ق ) are of one place of articulation, indicating the thing's tightness and validity; the truth is the opposite of falsehood. Its plural is (Hokook and Hakaek-rights and truths, and it has no building of the minimum number, and the right of the matter has the right and the right of right and rights: it has become a right and has been proven, and that is why it is said the facilities of the House has rights, and he has the right to say, and I have achieved it. In the revelation of the Quran (those upon whom the word will have come into effect will say (Quran, Al-Qasas:631), this means ( come into effect): and also “ Allah said, “ indeed, those upon whom the word (i.e. decree) of your lord has come into effect will not believe”. Mean it is proved and he has a right that with no doubt. It said: A right means it is obligatory and must (Al-Farahidi, 170 ah, 3/6; Ibn Manzoor, 2017, 10/49; Al-Fayoumi, 2010, 1/143; Al-Razi, 1979, 2/16; Al-Sahari, 1999, 3/386).

The matter was right as a matter of response as well and (validated by) any verification, and it became certain of it. The right of the thing must, and achieved the thing: Prove it ( the word will have come into effect) (Quran, Yassin:7): The judgment has been proven, and the knowledge has been preceded and verified: Its certainty and made it fixed is necessary (Al-Razi, 1986, 1/215; Al-Razi, 1999, 1/7; Al-Kafawi, 1998, 1/390).

Truth: is one name of the names of Allah Almighty, or from His attributes. It is what is real, whose existence and divinity are realized, and it was said: The origin of the truth: Matching and approval, and the truth: It is the Qur 'an. Almighty said: “And do not mix the truth with falsehood or conceal the truth while you know (Quran, Al-Baqarah:42)”. It was said: the truth: The command of the Prophet, peace and blessings of Allah be upon him, and what came of the Qur 'an, as well as he said in the Almighty's saying: “ rather we dash the truth upon falsehood, and it destroys it”. Truth: The difference between falsehood of all kinds: its plural is (hokok and hakaek) rights and truth, and it does not have the minimum number. Right: Justice. Truth: Islam and truth: money. And the right: the ownership, Right: A fixed asset that cannot be denied. Truth: Honesty. And the truth: death. And right: assertiveness (Al-Zubaidi, 2001, 25/166).

Through the previous linguistic meanings, it can be concluded that what is meant by right is the constant that does not justify its due denial with certainty.

### ***Definition of the right terminologically***

The right is defined in the Dictionary of Jurisprudence: as one right that includes what God's and what is for his servants was (Abu Jeeb, 1988, 1/94).

In the doctrinal definitions: It is the constant that is not justified to deny, certainty, against falsehood, luck and portion, money and king, the fated matter, and its plural is (Hokok) rights (Al-Barakti, 2003, 1/80).

Sheikh Ali Al-Khafeef, may God have mercy on him, defined it as a worthy interest in Sharia. This made it clear that the right must be in the interest of a person to whom it is owed in order to achieve material or moral benefit (Al-Khafif, 2001, 57).

This definition covers all types of legitimate rights and others that scholars have mentioned in the types of rights.

Professor Mustafa al-Zarqa defined it as a jurisdiction in which the Sharia decides on authority or responsibility (Al-Zarqa, 1999, 18).

Close to it is the definition of Dr. Fathi al-Derini as: a jurisdiction recognized by the Sharia as an authority over something, or a requirement of performance from another to achieve a certain interest (Al-Khafif, 2001, 57).

Perhaps Dr. Fathi Al-Derini's definition of the right is the best definition mentioned by contemporary scholars, because it is an inclusive definition that includes the rights of God Almighty, and the rights of natural and legal persons of both kinds in properties and personal, and highlights the aspect of interest, and Allah Almighty knows best.

### ***Definition of the right in the system.***

The people of the law did not agree on the definition of the right, some defined the meaning of the right as:

"An authority established by law for a particular person, by virtue of which that person has the advantage of doing a particular job." The truth was said: "An interest protected by law" (Al-Zarqa, 1999, 18). Some view the definition of a right from the perspective of its author, and some view the right through its subject matter.

The legal definition of the right to the Saudi system:

The Kingdom of Saudi Arabia has not adopted laws that define the rights of individuals as a matter of tradition to other countries. Rather, the laws and rights in the Kingdom of Saudi Arabia are based on the rights granted to Muslims by Islam and the Holy Quran.

Some have defined it as a value that individuals should have to facilitate all humanitarian dealings.

It is noted that the concept of the right to the Saudi regime is much broader than it is in many positive systems, as it is a unique concept of Islamic law, which recognizes the existence of rights that do not exist in other systems.

### ***The definition of pardon linguistically***

(العفو Alafwa) Pardon The letters (ع), (ف), and the vowel sound (و) indicates to leaving things. Allah Almighty pardoned His creation, and that left them, so He would not punish them, besides Him... It may be that a person pardons something in the sense of abandonment, Pardon is the Almighty Allah's Pardon for His creation, forgiveness, and leaving the punishment of the deserving. He forgave his guilt, forgave his guilt, erasure, and the sweetest and the best of money, and the choice of the thing, the best of its quality, the grace, and the favour (Al-Fayrouzabadi, 2019, 1/1313).

Remission which is an act of pardon, which is to forgive guilt and leave punishment for it, and its origin is erased and obliterated, and it is one of the structures of exaggeration. It is said: (عفا Afa) psrdoned, (يعفو yaafu) pardons (عاف afin) pardoner (Al-Zubaidi, 2001, 39/68; Ibn Manzoor, 2017, 15/72).

As for the words of God Almighty: (Unless they forego the right or the one in whose hand is the marriage contract), here the pardon means the virtue of giving what he should not, or leaving the woman what she should (Quran, Al-Baqarah:237). It means that the woman pardons the half due to her and leaves it to the husband, or the husband pardons the half and gives it all (Al-Fayrouzabadi, 2019, 2/372).

After presenting the most important linguistic meanings of the word "pardon", we find that the most relevant meaning in a sense intended is the projection, overstepping and forgiveness of rights between people from each other, in financial and other rights.

### ***Definition of Pardon terminologically***

Ibn al-Qayyim defined it<sup>1</sup>: "Drop your right to goodness, generosity and approval with your ability to take revenge (Al-Jawziyah, n.d, 325)".

Some researchers defined it as the termination of a fixed right, all or some of it absolute or mosquitoes (Al-Otaibi, 1992, 107).

Others defined it as forgiveness of guilt and abandonment of punishment (Al-Zubaidi, 1339 AH, 6/143).

Through these definitions, it is clear that remission is intended to extinguish the legally due right from those who own it.

### ***Definition of Remission in the system***

Some researchers defined it as: completely decriminalizing the act committed and erasing its effects, whether before the lawsuit was filed or after it was filed or before the judgment was issued or after the punishment was issued (Mohammed, 2022, 609).

Judicial pardon is defined as: a process that is resulted in the expiry of criminal proceedings when they have reached a degree of determination (Al-Akeeli, 1975, 250).

The remission was defined as: the waiver by the holder of the capacity of his right, which can be waived by a taxpayer without compensation (Atallah, 2008).

We note from the previous definitions that amnesty as a legal term extends to include many types, financial, social, criminal and judicial, and perhaps the closest of these definitions to the subject of the research is the last definition because it relates to the waiver of the right holder of the dowry.

### ***The definition of a dowry is a language***

(Mehr dowry) the letters m(م), ( h هـ) and ( r ر), of the origin of the word, one signifying a reward in a private thing, and the other is an animal. The first is the dowry: the dowry of the woman her wage, and the dowry of the woman is dowry for the benefit of what I gave her, which is paid by the husband to his wife by the marriage contract (Al-Razi, 1979, 5/281).

Dowry: (Maher)Dowry, plural is (muhoor)dowries, and the woman (dowry) has her dowry (Al-Fayrouzabadi, 2019, 4/2016; Al-Razi, 1999, 1/200; Al-Zubaidi, 2001, 14/156; Ibn Manzoor, 2017, 5/184).

---

<sup>1</sup>) He is Imam Shams al-Din Abu Abdullah Muhammad bin Abi Bakr bin Ayoub bin Saad al-Zar'i, known as the Ibn Qaim al-Jawziyah, born in Damascus in 691 of Al-Hijra, and died in Rajab in 751 AH. Taught by Sheikh of Islam Ibn Taymiyyah, may Allah have mercy on him, who was considered one of the hardworkers, and has many works in various sciences and arts. (Ibn Rajab's Hanbala Tail Layers 2/447 - see: Zirkli Flags 6/56)

Sadaqah (صداق) has nine names; Sudaqah, Sadaqah, Maher, Nahlah, Al-Farda,,Al-Ra'idah, Al-Alaq, Al-Aqar, and Al-Hubba (Qudamah, 1984, 7/209).

In summary, in the previous sense, the Hummer is the woman's rightful substitute for the man in the marriage contract, and it was named after giving him genuine notice of the husband's desire for the wife.

### ***Definition of the dowry terminologically***

The scholars agreed - may God have mercy on them - that the dowry must be in the marriage contract, but since the marriage contract was not intended for trade-offs and trafficking, their views differed in its definition.

Hanafi defined it as: the name of the money that must be in the marriage contract with the husband in exchange for some, either by name or by contract (Al-Hanafi, 2002, 2/329).

Malikiya defined it as what is given to the wife in exchange for having enjoy with her (Al-Sawy, 1241 AH, 2/428). Shafi'i defined it as what it is obliged by marriage or sexual or miss a few coercions, such as breastfeeding and the return of witnesses (Qudamah, 1984, 4/366).

Hanbalah defined it as the compensation of marriage, whether named in the contract or imposed after it by their consent or the ruler (Zamakhshari, 1407AH, 5/128).

Through the previous definitions, some scholars have called honesty a consideration that is not recognized. The marriage contract is not concluded as a matter of quid pro quo because it is contrary to the sanctity of the marriage contract, and it violates the dignity of women. At the same time, it is a right of women to men, and it is one of the consequences of the effects of the marriage contract.

### ***Definition of dowry in the system.***

Article 36 of the Saudi Personal Status Law defines dowry as The money paid by a man to a woman because of the marriage contract (Saudi Personal Status, 1443 AH).

Article 40 of the Jordanian Personal Status Law stipulates that: "Dowry is what is given to the wife by virtue of a valid contract (Jordanian Personal Status Law, 2019)."

In Article (49) of the UAE Personal Status Law, the dowry is defined as "the money provided by the husband is based on the intention of marriage and there is no limit to the minimum, and most of it is subject to the law of determining dowries (UAE Personal Status Law, 2020).

Article 14 of the Algerian Family Code defines it as follows: "what shall be paid to the wife in form of money or any other legally permissible thing, and it shall be its property and it shall dispose of it as she wishes (Algerian, 1404 AH)."

Article( 72) of the Sudanese Personal Status Law defines dowry: All legally valid for its obligation is to be a dowry, whether it is money, work, or benefit (The Sudanese Personal Status, 1991).

Through the above definitions of dowry in the Arab systems, It can be concluded that it is influenced by Islamic law and explicitly taken from it. All of them agree that what men

pay in terms of money, work or benefit from what is permissible is the right of a woman to dispose of it as she wishes as soon as the contract is correct, and there is no limit to the least.

## **The legitimacy of the dowry, and its consideration, in Islamic law and the Arab systems**

*The first section is about the dowry's legitimacy and its considerations in Islamic law.*

Quran, Sunnah and unanimity establish the legitimacy of the dowry, and it elevates the status of women and increases their worth, which is the exact honour for women, and the provision of evidence of the building of a decent marriage with them, and the provision of good faith to cohabit with them with kindness.

Jurists have agreed that the dowry is obligatory, and it is not permissible to collude to leave it so that the marriage is without a dowry, and the husband must pay the money as soon as the contract is established. It is a duty in the contract, but it is not a corner or a condition of marriage, and it is not permissible to drop it, it is not permissible for the custodian to donate his property to the husband without a dowry, and if he does, he has a dowry like it (Qudamah, 1984, 2/229; Al-Sawy, 1241 AH, 5/144; Al-Qurtubi, 2004,2/25; Saudi Ministry of Islamic Affairs, Call and Guidance, 1424AH, 1/301).

The evidence of the legitimacy of the dowry and its obligation is from the following:

### ***First: From the book***

The Almighty said: ( so for whatever you enjoy – of marriage- from them, give them their due compensation as an obligation) (Quran, AlNisa: 24).

The aspect of evidence is that: If a man marries a woman and then has intercourse with her, her dowry must be given. The Almighty said: (And give the women- upon marriage- their –bridal- gifts graciously) (Quran, AlNisa: 4).

The aspect of evidence is that they give their dowries, it is bridal- gifts, a religion, a doctrine, and what is a religion and a doctrine, is a decree. The aspect of evidence is that: The command of Allah Almighty: (And give them their wages ), that is, give them their dowries, which is the dowry, and the imposition of a proven source, that is, the imposition of this as a duty, which indicates the necessity of the dowry (Al-Qurtubi, 1964, 9/492).

### ***Second: from Sunnah***

On the authority of Yazeed bin Abi Habib, on the authority of Abu Al-Khair, on the authority of Aqaba, on behalf of the Prophet, may Allah bless him and grant him peace, said: (The most right of the conditions that you ought to fulfil what you enjoyed her garment)) (Amali, 2005, 7/20).

The aspect of evidence is that: What is meant by the conditions that are more deserving of fulfilment is general in all conditions, the permitted conditions, or what is related to intercourse, such as dowry, gift, and waiting period, or it is intended that the dowry must be only (Al-Din, nd, 13/299).

### ***Third: From Unanimity***

Muslims have been unanimous since the time of the Prophet (peace and blessings of Allah be upon him), until this time, on the duty of the dowry to the woman over the man and on the inadmissibility of the marriage contract without mentioning the dowry. This agreement

was mentioned by scholars, including what was quoted by Ibn Hazm: (They agreed that if in the marriage happen intercourse, there must be a dowry) (Al-Andalusi, n.d, 69).

Al-Mawardi said (Al-Sobky, 2008, 2/267), (The nations met that the wife's dowry is worthy) (Al-Baghdadi, 1419 AH, 9/392).

Ibn Qudamah said<sup>2</sup>: (The Muslims agreed on the legitimacy of the dowry in marriage) (Qudamah, 1984,7/209).

Ibn Abdul Barr said<sup>3</sup>: (The Muslim scholars agreed that no one may step on a garment (intercourse) granted to him without dowry, and that it is not permissible for him to step on a marriage without a specified dowry: either debt or cash, and that the delegate does not enter into it until he names a dowry, and if he falls into it, the alms of the equal dowry must be established) (Al-Qurtubi, 2000, 5/408).

Al-Kurtubi said<sup>4</sup>: "The duty of dowry for women is agreed upon, and there is no dispute about it (Al-Qurtubi, 1964, 5/24)."

In conclusion: The dowry is a basic and legitimate right of the wife, which Almighty God obligates in His book and the Sunnah. It is a gift from God Almighty to women as an exclusive grant. God has ordered that dowries be given to women, as this dowry is an obligation for men to give it to women upon marriage, let be few or much.

### ***The dowry's legitimacy and its consideration in the Arab system.***

The dowry is one of the pillars of the marriage contract, which is one of the wife's financial rights to her husband. It is an exclusive right of the woman in return for what she exerts from herself in the marital relationship. For this reason, Arab laws and legislation have stipulated it in the personal status system, which we will try to explain in this research.

The Jordanian legislator enacted the Jordanian Personal Status Law No. (15) of 2019.

In Chapter Three, it is stated that the dowry is one of the effects of the marriage contract, and Article (39) stipulates that it is what the parties name at the time of the contract, whether little or much, and Article (40) states that the wife must be given the specified dowry as soon as the valid contract is concluded and that it is the wife's property as stated in Article(57) (Jordanian Personal Status Law, 2019).

Article 38 and article 40 of the Saudi Personal Status Law stipulate that the woman owns the dowry and that she is not obliged to dispose of it. The dowry must be paid according to the valid marriage contract (Saudi Personal Status Law,1443 AH).

The Algerian legislature considers the dowry to be one of the conditions for marriage, as stated in Article(13), and Article( 14) stipulates that it may dispose of it as it wishes (Algerian, 1404 AH).

---

<sup>2</sup>) He is Imam Mowaffaq al-Din Abu Muhammad Abdullah bin Ahmed bin Muhammad bin Qadamah al-Maqdisi al-Dimashqi, one of the media in the doctrine of Imam Ahmad bin Hanbal, may God be pleased with him, who died in 620 AH, and his book " The Almugani", in which he explained "Mukhtis" is considered one of the greatest doctrinal books of the doctrines of imams and jurists (the conduct of the flags of the nobility 18/193)

<sup>3</sup>) Al-Imam, Al-Alama, Hafez Al-Maghrib, Sheikh of Islam, Abu Omar Yousef bin Abdullah bin Muhammad bin Abdul Bar bin Asim Al-Nimri Al-Nandalusi, Al-Qurtubi, Al-Maliki, the owner of the super ratings. (Conveyance of flags of nobles 18/153)

<sup>4</sup>) He is Imam Abu Abdullah Muhammad bin Ahmed bin Abi Bakr bin Farah Ansari al-Khazari al-Khazraji al-Qurtubi from the knowledgeable and devout scholars who are ascetic in the world. (Shtharat Althab- Gold nuggets; for Ibn Al-Amad 5/335)



Article (50) of the UAE Personal Status Law states that the dowry belongs to the woman, who shall dispose of it as she wishes. Any condition contrary to this shall be disregarded. If a dowry is correctly named in the contract, the woman shall have that name as in Article (51) (UAE Personal Status Law, 2020).

## **Types of dowry and the right to pardon it, in Islamic law and the Arab systems**

### ***The first section: Types of dowry and the right to pardon it in Islamic law***

The dowry is divided in terms of the woman's entitlement to it into two types: the specified dowry and equal dowry, which is sometimes specified in the event of an agreement between the parties on its amount, which is known as the designated dowry and may not be specified, the proverbial dowry must be.

The first element: The specified dowry: It is what is called in the contract or after it by mutual consent, to be expressly agreed in the contract, or imposed on the wife after it by mutual consent, or imposed by the ruler a lot or a little, for the (Al-Zuhaili, n.d, 9/674) saying of Allah Almighty: (And there is no blame upon you for what you mutually agree to beyond the obligation) (Quran, AlNisa: 24).

The woman has a fully-specified dowry if he has been granted proper privacy or has an intimate relationship in its real terms; as Allah, the Almighty says: (So for whatever you enjoyed – of marriage- from them, give them their due compensation as an obligation), as well as death, because the contract is not dissolved by death but ends with it. The dowry is a debt owed by the husband, and if he dies, he will settle like the rest of the debts, and Hanfi, Shafi 'a, and Hanbalah practice this (Quran, AlNisa: 24).

As for those who named her a dowry, before going on her, the jurists show her right to say the Almighty: (If you divorce them before you touch them and you have already specified for them an obligation, then –give- half of what you specified) ((Quran, Al-Baqarah:237).

And if you divorce them before you enter them, then it is the husband's duty to give half of what you have agreed to give (Ibn Kathir, 1419AH, 1/486; Al-Saadi, 2000, 1/105).

The second element: The right to pardon the specified dowry, an unchallengeable right of the wife may be pardoned, whether it is a debt, it becomes valid to drop it, or it is an object such as gold, silver, and real estate, it is valid to be owned by the husband with his consent, and it is not valid to drop it because the objects shall not be dropped, as stated by the Faqihs-jurists (Al-Din, n.d, 5/139; Qudamah, 1964, 6/288; Al-Barai & Al-Hanafii, 1313AH, 6/214).

Allah the Almighty has permitted the husband to eat what he pleases himself of his wife's money, and this is not unless she permits her husband, as stated in the Almighty saying: ( If they give up willingly to you anything of it, then take it in satisfaction and ease) (Quran, AlNisa: 4).

The divorced women are authorized to drop half of the dowry after it is due if it is called a dowry because it is their right to dispose of it in the way they want if they own the money and are adults, aware, and conscious (Al-Qurtubi, 1964, 3/206; Fakhruddin, 1420 AH, 6/479; Al-Arabi, 1424 AH, 1/293-349).

The aspect of evidence: Allah allowed the husband to eat what he pleases of his wife's money, and this is only by allowing her husband.

The conclusion: The woman has the right to pardon her dowry or some of it or give it after getting it, it is permissible for her, and the agreement was conveyed to her by Ibn Qadamah, and he said: "If the woman pardons her dowry that is on her husband, or some of it, or give it after getting it, which is it is permissible and true to do what she wants in her money, and we do not know in it a dispute (Qudamah, 1964, 10/163)."

Section Element: Equal dowry: It is what people used to pay a dowry and the amount that people used to pay (Qudamah, 1964, 4/3; Qalaji, 1988, 46).

The opinions of the jurists differed in determining the equal dowry, as (Al-Razi, 1999, 2/140). Hanafi is determined by a woman who is similar to her from her father's family, not her mother, if she is not of her father's people(tribe), such as her sister, aunt and niece, and is similar in the desired qualities usually such as beauty, charm, age, mentality and religion. If she is not from her father's family, her dowry is considered a woman who is similar to her father's family in social status. However, suppose she is not similar to her father's family in her country. In that case, it is considered the dowry of a woman similar to her from another country similar to her father's country.

The equal dowry is considered by Amalikyah of the (Abu al-Qasim, 1424 H, 204) person in her social status, her money, her beauty, her mind and her country, without looking at her relatives.

It is considered only by the (Al-Seniki & Al-Ansari, n.d, 3/210; Qudamah, 1964, 4/385) Shafi'a, who attributed the wife to bond family relatives, such as sisters, aunts, and daughters. If none of the women are like her, the closest relative or lack of knowing of their dowry, then she is considered a dowry of relative to her nearest women, such as mothers, grandmothers, and aunts. They consider age, knowledge, mentality, beauty, eloquence, virginity, and others.

As for the Hanbalah, they (Qudamah, 1964, 10/15) see that an Equal dowry is considered as the woman of her relatives, especially if there is no one similar to her from her father's side, it is determined by her equal relatives from her mother's side, and if there is no one like her from her hometown, as it is considered as her situation in religion, mind, beauty, wealth, virginity, etc.

The dowry shall be established in the case of a contract without naming the dowry, agreeing not to pay the dowry or requiring its remission, or the difference between the spouses on the dowry, or the improper naming of the dowry, such as being unidentified, or the naming is not money, as well as in the suspected intercourse or forced on adultery, or the in the wrong marriage that lost a pillar or condition of the validity of the contract as a condition of witnesses, by marrying her without witnesses (Al-Barai & Al-Hanafi, 1313AH, 1/139; Qudamah, 1964, 10/15).

The fourth element: The right to pardon the Equal dowry, permissible if the wife wants to give it to the husband or pardon it because it is a right exclusive to her, and pardon is a kind of charity if the husband is in debt, and whether it is known or unknown, for Hanfi, and (Al-Eini, 2000, 15/139) Hanbalah (Qudamah, 1964, 10/15), unlike the Shafi'a, who see the pardon for the unknown dowry is invalid, the pardoning it is void because she pardoned him of an unknown thing (Shafi, 1990, 5/81).

### ***Types of dowry and the right to pardon it in the Arab systems***

Article 39 of the Jordanian Personal Status Law states that the dowry is of two types:

- 1- A specified dowry, which the parties specified at the time of the contract, whether little or much
- 2- The Equal dowry, which is an equal dowry of the wife of her as a relative of her father, and if there are no parables and peers for her on the side of her father, it is similar to her as one of the people of her town.

Article 46 stipulates: If the dowry is not specified in the correct contract or marries her as having no dowry, or the dowry is named, and the naming was wrong, or there is a dispute in the naming of the dowry, and the naming is not proven, the following provisions shall apply:

a. If proper sexual intercourse or the right to privacy take place, the equal dowry shall be binding, provided that it does not exceed the amount claimed by the wife and is not less than the amount claimed by the husband.

b. If no proper sexual intercourse or privacy has taken place and the divorce has occurred, the divorced woman shall be entitled to be given half of the equal dowry (Jordanian Personal Status Law, 2019).

The right to pardon the dowry is stipulated in Article (53): Clause (a) of the Jordanian Personal Status Law, provided that the husband has the right to increase the dowry after the contract and the woman has the right to degrade it if they are fully competent to act, and this is attached to the origin of the contract if the other party accepts it in the Council of Increase or Degradation, provided that this is officially documented before the judge (Jordanian Personal Status Law, 2019).

Clause (2) of Article (40) of the Saudi Personal Status Law states the sections of the dowry by affirming that: "The dowry that is fully specified - or the equal dowry – having sexual intercourse into the marriage, having privacy, or the death of one of the spouses.

In clause (3), a divorced woman shall be given before having sexual intercourse half of the dowry if the dowry is specified. Otherwise, she shall have pleasure not exceeding half of the equal dowry.

Article 41 states that a woman has the right to have equal dowry in the following cases: Silence on naming dowry. Negating the dowry in the marriage contract. The wrongness of the specified dowry (Saudi Personal Status Law, 1443 AH).

The right to pardon the dowry is stated in Article 38 of the Saudi Personal Status Law, which states that the woman owns the dowry and is not forced to dispose of it (Saudi Personal Status Law, 1443 AH).

The Algerian Family Code stipulates that the dowry is specified in the contract, whether it is postponed or accelerated. If the dowry is not specified, the wife is given an equal dowry, as stated in article 15. Article 16 also stipulates that the wife is given the full dowry by sexual intercourse or the husband's death. Half of the dowry is reserved upon divorce before intercourse (Algerian, 1404 AH).

The right to pardon the dowry is mentioned in Article( 14) of the Algerian Law of Status, which considers the dowry to be the property of the woman, and she may dispose of it as she wishes intercourse (Algerian, 1404 AH).

In the UAE Personal Status Law, Article (51) divided the dowry into two types: the specified dowry and the equal dowry

- 1- If the amount of dowry is validly determined in the contract, the amount spelled out is due to the woman.
- 2- In case it is not determined in the contract, invalidly stated or originally denied, she is given an equal dowry payable to a bride under the same circumstances (UAE Personal Status Law, 2020).

The right to pardon the dowry is stipulated in Article (50) of the UAE Personal Status Law, that the dowry is owned by the woman, who acts in it as she wishes. Any condition contrary to it is not taken into consideration (UAE Personal Status Law, 2020).

In conclusion: The right to pardon the dowry in Arab systems is left to the wife only, which implies that she has the right to pardon as well and that the custodians have no authority to pardon or degrade the dowry legally approved for women.

## **The research Methodology**

### ***First: The methodology of writing the study***

The descriptive analytical approach was used in dealing with research issues, extrapolating texts from legal and systemic points of view, and explaining the related provisions. Extrapolating the research sources and their advanced and late references and trying to find as much of them as possible in relation to the research subject. Investigating the research issues and clarifying the legal and regulatory opinion which achieves the research goal. Etymologizing the research issues and mentioning their evidence from the book and the Sunnah, the opinions of jurists and other references. Focusing on the research subject, presenting the opinion of the Islamic law and the Arab systems that have been objectively issued, and avoiding prolixity.

### ***Second: Method of documentation, marginalization and extraction***

Attribution of the Quranic verses to the Suras with their numbers. Extraction of the Prophetic Hadiths mentioned in the research, indicating their degree if they are not mentioned in Alsaheeh ( Sahih Bukhari and Sahih Muslim) or one of them, and if they are, then the researcher will confine himself to extracting them. Documenting the jurisprudential sayings from the approved jurisprudence books. Documenting linguistic meanings from linguistic dictionaries. Compiling for infamous scholars. Constructing a conclusion in which a summary of the most important findings. Concluding the research with sources and references.

## **Conclusion and recommendation**

It includes the most important findings and recommendations in the research, which are as follows:

1. Islamic law is concerned with honouring women and preserving their rights. It has imposed marital rights on women, the most important of which is the right to a dowry.
2. It is not permissible to conspire to leave the dowry so that the marriage is not established without a dowry, and the husband must pay the money as soon as the contract is completed. It is a duty in the contract.
3. For custodians who are harmed by the lack of some qualities in some of the pillars or conditions of the marriage contract, such as incompetence in the husband, or the lack

- of a dowry, etc., the rejection of the marriage contract in which some of the considered conditions are not met, or accepting it and waiving their right to do so.
4. In Arab systems, dowry is a woman's right, which is what men pay in terms of money, work or benefits from what is permissible. Wives can dispose of it as they wish as soon as the contract is valid, and there is no limit to it.
  5. The woman has the right to pardon the dowry approved for her legally; she owns it and has the right to dispose of it, and the jurists have made her the right to pardon her dowry or some of it or give it after receiving it legally.
  6. If the wife wants to waive her right to a specified dowry, it is not right until her husband accepts it because it is not right to get involved in human property until he accepts it.
  7. When a woman is pardoned for her right to a dowry, she must be of free will, chosen, and not accepted –correct- from the forced to pardon.
  8. The right to pardon the specified dowry is an inalienable right of the wife, which may be pardoned, let it be a debt owed, it is valid to drop it, or it is an object such as gold and silver, it is valid to be owned by the husband with his consent, and it is not valid to drop it because the objects are not accepted to be dropped.
  9. The right to pardon the dowry of the equal dowry is permissible if the wife wants to give it to the husband or pardon it because it is a right exclusively for her, and pardon it is a kind of charity if the husband is in debt, and whether it is known or unknown.
  10. The wife has the right to disclaim her pardon of the husband and is given her dowry if her husband arbitrarily divorces her in some Arab systems.
  11. The researcher recommends that judicial committees should be formed to review the personal status system from time to time to address the deficiencies, given the nature of the cases filed in the courts.
  12. The researcher recommends raising awareness at all levels of education of the rights and duties of women following the laws and systems.
  13. The researcher recommends increasing accurate and specialized research in the field of personal status, especially those related to dowries, filiation and divorce.

These are the most important conclusions and recommendations that I have reached through this research. If I am correct, it is from Allah alone. If I am wrong, it is from myself and Satan, and I ask for Allah's forgiveness. The last of our prayers is Praise be to Allah, Lord of the Worlds.

## References

### *The Holy Quran.*

- Abu al-Qasim, M. A.(1424 H ). Jurisprudence Laws, Third Edition, Scientific Books House, Beirut.
- Abu Jeeb, S., (1988), the jurisprudential dictionary linguistically and idiomatically, second edition, Dar Al-Fikr. Damascus Syria.
- Al-Akeeli, A.-A.(1975)Principles of Criminal Procedure in the Code of Criminal Procedure First Edition - Al-Maarif Press, Baghdad.
- Al-Andalusi, A., (n.d), The ranks of unanimity in acts of worship, transactions and beliefs, Dar Al-Kutub Al-Alami - Beirut.
- Al-Arabi, M. A., A.(1424 AH.) The provisions of the Qur 'an- M- Commentary by Muhammad Atta, Scientific Books House, Beirut- Third Edition.
- Al-Baghdadi, A. A. M. (1419 AH).Alhawi Alkabir -Large Container in the Jurisprudence of the Doctrine of Imam Al-Shafi 'i, a brief explanation of Al-Muzni-, famous in Al-Mawardi - Scientific Book House, Beirut – Lebanon - First Edition.

- Al-Barai, O. A. M. M & al-Hanafi, F. A. A. (1313AH ) Showing the facts Explaining the treasure of the minutes and the footnote of Al-Shalabi-footnote: Shihab al-Din Ahmed bin Ahmed bin Yunus bin Ismail bin Yunus al-Shalabi (deceased: 1021 AH) - publisher: Al-Amiriyah Grand Press - Bulaq, Cairo- first edition.
- Al-Barai, O. A. M. M & Al-Hanafi, F. A. A. (1313AH ) Showing the facts Explaining the treasure of the minutes and the footnote of Al-Shalabi-footnote: Shihab al-Din Ahmed bin Ahmed bin Yunus bin Ismail bin Yunus al-Shalabi (deceased: 1021 AH) - publisher: Al-Amiriyah Grand Press - Bulaq, Cairo- first edition.
- Al-Barakti, M., (2003), Jurisprudential definitions, first edition, Dar Al-Kutub Al-Ilmiya, Pakistan.
- Al-Din Al-Aini, A. M.M (), Omda Algari in Sahif Albukari - the trusted reader in the Correct Al-Bukhari.Publisher: Dar Revival of the Arab Heritage – Beirut.
- Al-Din, A.A.B., Abu Al-Hassan (n.d ) Al-Hedayah in the Explanation of the beginning of Islam Ebracer - Validator: Talal Youssef -Publisher: Dar Revival of the Arab Heritage - Beirut - Lebanon
- Al-Eini Al-Hanafi, A. M. A. (2000) Building Explanation of Hedayah- Publisher: Dar Al-Kotob Sahih Al-Ulami - Beirut, Lebanon- First Edition, 1420 AH - 2000 AD.
- Al-Farahidi, A. T. (170 AH), Al-Ain Dar Book, Al-Hilal Library for Printing and Publishing, Beirut.
- Al-Fayoumi, A. M. (2010), Al-Misbah Al-Munir fi Gharib Al-Sharh Al-Kabir, The Scientific Library - Beirut.
- Al-Fayrouzabadi, M.T. (2019) Almuheet Dictionary. , Al-Resala for Printing, Publishing and Distribution, Beirut – Lebanon.
- Algerian Family (1404 AH), Code No. 84-11 of 9Ramadan.
- Al-Hanafi, S. O. I.( 2002) Al-Nahr Alfaeq in explaining the treasure of the minutes- Author: (d. 1005AH) - Validator: Ahmed Izzo Attn. - Publisher: Dar al-Kotob al-Alami - first edition.
- Al-Jawziyah, M. B.A.S (n.d) The Spirit of Speech on the Souls of the Dead and the Living with Evidence from the Book and the Sunnah - Publisher: Dar al-Kotob al-Alami – Beirut.
- Al-Kafawi, A., (1998), The Colleges, A Dictionary of Terminology and Linguistic Nuances, Al-Risala Foundation - Beirut.
- Al-Khafif, P. (2001), Right and Dhimma and the Impact of Death on Them, First Edition, Dar Al-Fikr Al-Arabi, Beirut.
- Al-Otaibi, M.M. (1992) The offender's rights after the issuance of the judgment in the Islamic law, Dr.– First Edition.
- Al-Qurtubi, A. M. (1964), The Collector of the Provisions of the Qur 'an for Qurtubi (Tafsir al-Qurtubi), Egyptian Book House.
- Al-Qurtubi, A.O. Y(2000), Alestithkar, Publisher: Dar Al-Kotob Al-Ulami – Beirut - Edition: First.
- Al-Qurtubi, M., (2004), The Beginning of the Mujtahid and the End of the Muqtadid, Dar Al-Fikr Beirut.
- Al-Razi, Al-Hanafi Z. A. M. (1999) Mukhtar Al-Saheh.Validation: Youssef Al-Sheikh Muhammad- Publisher: The Modern Library - Model House, Beirut – Saida- Fifth Edition.
- Al-Razi, A. Z. (1979), Dictionary of Standards of Language, Dar Al-Fikr, Damascus, Syria.
- Al-Razi, A., (1986), The Total Language of Ibn Faris, second edition, Al-Risala Foundation, Beirut.
- Al-Razi, M., (1999), Mukhtar Al-Sahah, Fifth Edition, Modern Library - Al-Dar Al-Namothaziah, Beirut - Sidon.

- Al-Saadi, A. N. (2000) (Tayseer Al-Karim Al-Rahman) Simplifying The quranic verse in the interpretation of the words of Allah. Validator: Abdul Rahman bin Maala Al-Luwaheq - Publisher: Al-Resala Foundation - First Edition: 1420AH.
- Al-Sahari, S., (1999), Expression in Arabic, Edition: First, Ministry of National Heritage and Culture - Muscat - Sultanate of Oman.
- Al-Sawy, A., (1241 AH), The language path passer to the nearest path known as the endnoteof on the summarised Explanation (the summarized Explanation is Sheikh Al-Dardir's Explanation of his book called The Nearest Path to Imam Malik's Doctrine. Dar Al-Maarif.
- Al-Seniki, Z. M. & Al-Ansari, (n.d) Asnah Al-Talib in explaining the student's kindergarten - - Publisher: Dar Al-Kitab Al-Islami - Edition: No edition and no date.
- Al-Sobky, T., (2008), Tabaqat Al-Shafi'i Al-Kubra, Hajar for printing, publishing and distribution.
- Al-Zarqa, M. A.(1999) Introduction to the General Theory of Commitment in Islamic Jurisprudence. Year of Publication. Dar Al-Qalam – Damascus.
- Al-Zubaidi, O. M. A. (1339 AH) Clarification of the verdicts in Explanation of the masterpiece of the rulers. Tunisian Press - First Edition.
- Al-Zubaidi, M., (2001), Taje Alarosse from Jawaher Al-Qamos, Dar Al-Hidaya, Ministry of Guidance and News in Kuwait - National Council for Culture, Arts and Literature in the State of Kuwait.
- Al-Zuhaili, W.(n.d) Islamic Jurisprudence and Evidence. Publisher: Dar Al-Fikr - Syria – Damascus - Fourth Edition
- Amali, M.A. (2005) The Almighty Allah giving in Sahih al-Bukhari. Validator: Muhammad Badr Alam al-Mirti - Publisher : Dar al-Kotob al-Alam Beirut – Lebanon- First Edition.
- Atallah, A. J. (2008) Remission in Islamic Jurisprudence, Its Controls and Areas, A Comparative Jurisprudence Study, Dar Al-Nafis, First Edition–Amman – Jordan.
- Fakhruddin Al Raz, A.M.O (1420 AH) the Unseen Keys. Grand Interpretation. Publisher: Dar Revival of the Arab Heritage – Beirut- Edition: Third.
- Ibn Kathir, I. B. O. (1419AH) Interpretation of the Holly Qur 'an -, validated by Muhammad Hussein, Dar al-Kotob al-Alami, first edition.
- Ibn Manzoor, J. A. (2017), Lisan al-Arab, 12th edition, Dar Sader- Beirut. Jordanian Personal Status Law, (2019), No. (15) of. Mohammed, H. (2022), Explanation of the Jordanian Penal Code -- First Edition
- Qalaji, M. R. (1988) Dictionary of the Jurists' Language: - Hamid Sadiq Qunaibi, Dar Al-Nafis for Printing, Publishing and Distribution, Second Edition.
- Qalaji, M. R. (1988) Dictionary of the Jurists' Language: - Hamid Sadiq Qunaibi, Dar Al-Nafis for Printing, Publishing and Distribution, Second Edition.
- Qudamah, A. (1984), Al-Mughni, Dar Al-Fikr for printing, publishing and distribution, Beirut. Saudi Ministry of Islamic Affairs, Call and Guidance, (1424AH).Jurisprudence facilitated in the light of the book and the Sunnah-Publisher: King Fahd Complex for the printing of the Holy Quran.
- Saudi Personal Status Law of 1443 AH - Issued by Royal Decree No. (M/73) dated 6/8/1443AH.
- Shafi 'i, A. M. A (1990) AlUmMother - Publisher: Dar Al-Maarifa – Beirut. Lebanon
- The Sudanese Personal Status Act of 1991.UAE Personal Status Law (2020), as amended by Federal Decree-Law No. 29 dated27/09/2020
- Zamakhshari, A. M. A. (1407AH) The revealing of the facts of the mysteries of revelation, Dar al-Kitab al-Arabi -Beirut, third edition.