

Controls Of the Marriage Contract in The Personal Status Law in Sharia

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Abstract

Praise be to Allah, peace and blessings be upon our master Muhammad, the God of the Immaculate, and on those who followed his guidance until the Day of Judgment. As for the aftermath, The Personal Status Law is a section of jurisprudence that is subject to the provisions of Islamic legislation in the statement of the validity or invalidity of the marriage contract, and the Iraqi legislator has taken the abbreviation path in regulating the topics that fall within the scope of the Personal Status Law. He has limited himself to mentioning the most prominent provisions of those topics without going into their details, except in a few matters, and thus he has left a very wide space for the principles of Islamic law and Islamic jurisprudence in their provisions. The importance of research lies in the statement of what these rules and controls on matters related to the marriage contract enjoy from the Personal Status Law to the most relevant legal texts. Devising the controls of Islamic legislation for what is stated in the texts of the legal articles for personal status. The researcher relied on the methodology of induction and analysis to present and indicate the controls of the application of the Personal Status Law, and in light of this, the research has been divided into two sections and a conclusion to the most important results.

Keywords: controls, pillars, conditions of the meeting, conditions of health, rules.

1. Introduction

Nearly half a century has passed since the issuance of the Iraqi Personal Status Law in force and he is still suffering One of the shortcomings and shortcomings in many personal status issues despite the many amendments to it that It reached amendments in addition to many other decisions and laws supplementing it. And she went after the fall Saddam's regime in 2003 is showing signs of a fundamental change in this law, including the introduction of sharia.

Islamic is replaced by the replacement of many texts that relate to the issue of polygamy or judicial separation, especially after The promulgation of the Permanent Constitution of Iraq in 2005, which gave Iraqis the right to deal according to their personal conditions. He referred the regulation of this by law.

Several questions come to mind, including the extent to which the law (1) responds to the requirements of Iraqi society. and the extent of The success of replacing codified legislation with Islamic jurisprudence in accordance with doctrines? The realism of the text of

Article (12) of the Constitution Permanent? What are the alternatives and proposals to address personal status issues in Iraq?

After this brief introduction, we will deal with this topic in three sections, the first section of which we have devoted to What is personal status, and the second is for legislative shortcomings in the law. Third, we address the extent to which the law is met.

For the need of Iraqi society and the possibility of replacing it with Islamic jurisprudence, in addition to a conclusion that includes the most important results and proposals.

2. First Section: The Concept of Controls

2.1 First Requirement: Definition of Controls

First: The definition of the officer is a language: limitation and confinement, force and preservation, which is taken from the control of the object and is said to adjust the object, that is: to lock it up strongly, the control is the necessity of the thing and its limitation (1), and the control of the object: save it firmly (2). The officer is terminologically (what examines the branches of jurisprudence that are similar in image and judgment, in one of the chapters of jurisprudence) (3) or is (what organized similar images that are not attributable to an influential omnibus meaning). (4)

Second: The difference between the officer and the jurisprudential rule: the rules in the language collect a rule, and its origin is from Qaad, Qa'd, Qa'uda Qa'ad, namely: the basis of the thing and its origins (5), and His saying Almighty :((Allah came to build them from the rules)) (6), and terminology: it is a total issue applicable to all its parts) (7), the rules of jurisprudence represent a total or majority jurisprudential origin, and their provisions are general legislative from multiple sections in the issues that fall under their subject (8). The jurisprudential rule relates in different sections being total or majority, while the officer relates to only one section(9), and as the wording of each of them is distinguished from the other, the jurisprudential rule is formulated in concise terms and words denoting generality and immersion, as in the rule of :(no harm and no harm), While this is not required in the jurisprudential regulations, it may be formulated in a sentence or paragraph, including: All that is fit from money to be a dowry is valid to be instead of vinegar.¹⁰

2.2 Second Requirement: The Meaning of Personal Status

First: - The meaning of personal status: If we look carefully at the relations of individuals and their ties in society, we find that they are divided into two types: the first of which is relations and ties of a financial nature such as sale, rent, gift and contract, and these are governed by civil law or may be governed by commercial law if they are characterized by their commercial nature, and second, relations that relate to the same human being and his person as an individual in the family, especially from the total families that constitute the basic building block in society such as marital relations and Paternity, filiation and kinship relations, and the law that regulates these relationships relating to the human person is the Personal Status Law (11).

When we return to Islamic jurisprudential groups, we find that jurists deal with these relationships specific to the same person and his person, such as marital relations, fatherhood, filiation or kinship under different titles such as the Book of Nikah, the Book of Divorce, the Book of Fiqh, the Book of Custody, the Book of Lactation, and so on, they do not discuss these topics under the title of a collector, while the law with the collection of all these topics

related to the same human being and his person under one heading. It is personal status.¹²

The term personal status was invented by Italian jurisprudence in the twelfth century, where we do not find it used in the books of Islamic jurisprudence, where jurists were discussing issues that fall within the concept of personal status in the book of Nikah, the book of divorce, the book of divorce, the book of alimony, the book of descent and so on (13), and in Iraq the phrase "personal status" appeared in the statement of the courts issued in 1917 and was followed by the phrase: Personal status, in the amendment of the statement of the courts in 1921 and then in the Sharia Courts Law of 30 June 1923 (14).

The phrase "personal status articles" also came in the Iraqi Basic Law in 1925, and this phrase was established by the legislation of the Personal Status Law for Foreigners No. (78) of 1931, and then settled by the legislation of the Personal Status Law No. (188) of 1959, which is the law in force (15).

Second: - What is meant by personal status: is (the sum of the natural or family qualities that characterize a person from the natural or family qualities that the law has had a legal impact on his social life, such as being a male or a female, being a husband, widow, divorced or a legitimate father, or being fully qualified or incomplete due to young age or madness, or being absolute or restricted because of one of its legal reasons) (16).

Third: - Competencies of Personal Status Courts: Article 26 of the Judicial Organization Law No. 160 of 1979, as amended, stipulates that "one or more personal status courts shall be formed everywhere where there is a court of first instance." Then the functions and competencies of the Personal Status Courts, which are: (17)

(Marriage and related dowry, alimony, descent, immunity, division, divorce and other marital matters).

- 2) The lawsuit related to the furniture of the marital home.
- 3) Guardianship, guardianship, trusteeship, will, erection of trustees or guardians, dismissal, accountability and authorization of legal and legal acts.
- 4) Assumption of the atomic endowment, erection of the Mutawali, dismissal of him, accountability and nomination of the Mutawali in the charitable or joint endowment.
- 5) The stone, lifting it and proving rationality.
- 6) Proof of death, liberation of estates, assignment of inheritance shares in Sharia divisions and distribution to heirs.
- 7) The missing and what is related to it.
- 8) Organize the arguments of guardianship, endowment and other arguments that are competent to it and record them in accordance with the law and approve the agencies related to the cases filed with them (18).
- 9) It shall be competent to rule on an urgent basis on temporary alimony or to appoint a trustee over a person in dispute over his custody who shall care for and maintain him (19).
- 10) The rhythm of the stone if its reasons are available without anyone's litigation, while the opponent in filing the lawsuit is the trustee (20).
- 11) Claims for the remuneration of the lawyer and the banks of the lawsuit before it
- 12) Consideration of claims and matters which other laws provide are within the jurisdiction of the courts of law Personality.

Fourth: - Spatial jurisdiction: Personal status claims are held as a general rule in the

court of the defendant's place of residence, but there are exceptions to this rule are:

- 1) A marriage proceeding may be instituted in the court of the place of the contract (21).
- 2) A suit for division and divorce may be instituted in the court of the place of contract, the court of residence of the defendant or the court of the place where the cause of action occurred (22).
- 3) A claim for alimony of assets, branches or wives shall be instituted at the place of residence of the defendant or plaintiff (23)
- 4) The court of residence of the deceased shall be competent to issue the legal divisions. (24)

It should be noted that there is no territorial jurisdiction in some matters considered by the Personal Status Court, so it is the competence of all personal status courts to register and certify marriages and to issue legitimate arguments for guardianship, guardianship, waqf, etc.²⁵

3. Second Section: Legislative Controls in the Marriage Contract

The provisions of the marriage contract for the taxpayer in Islamic jurisprudence revolve between several cases: imposition: in case of fear of falling into obscenity if he does not marry, marriage is a means of preventing falling into the legal prohibition, duty: if he is confident of justice and his fear of falling into obscenity, and the hateful: if he is not sure to achieve justice with his wife for his miscohabitation or inability to spend on her, and the haram: If he is unable to spend on his wife, he unjustly cuts her off (26). We will address through the statement of the most important legislative texts in the Personal Status Law and then comment on them with the most important Sharia controls on which the legal text is based, because of the link between the marriage contract and the Sharia rulings of validity or invalidity, and this is as we will include in our talk about it in this section through the following sections, namely:

Section I: Marriage Contract: (Marriage is a contract between a man and a woman whose purpose is to establish a bond for common life and offspring) (27).

Marriage contract controls, including the following:

- 1 - Marriage must meet its pillars and conditions as it is a contract between two parties, man and woman.
- 2 - The absence of prohibition between them, whether permanent or temporary.
- 3 - Its purpose is to establish a common life that is not temporary in time.
- 4 - Achieve its goal in preserving the human species by providing society with offspring.

Section II: Controls on the Wording of the Contract: (Marriage shall be concluded by an affirmative restricted by a language or custom of one of the intending persons and acceptance by the other and the agent shall take his place) (28). And its controls:

- 1- An offer must be made by one of the intending parties and an acceptance by the other party of the marriage contract.
- 2- The wording of the contract indicates the intention of the marriage in a language or custom.
- 3 - The offer and acceptance should not be separated by a long break or silence that affects the wording of the contract.
4. The prosecution shall be correct in a power of attorney to conclude the contract between the parties.

Section III: Controls on the conditions of the marriage contract and divided into:

- 1- Controls of the terms of the meeting: The terms of the contract do not accept correction but invalidate the contract in the event of its default, which are conditions related to the elements of the contract and their absence invalidate the contract, and include: 1- Eligibility for contractors: (The full capacity for marriage requires reason and completion of eighteen) (29).
- 2- Hearing in the Contract Council.
- 3- The union of the Council to offer, accept and approve what is stated therein.

Controls of health conditions: Health conditions are corrected if they are corrupted, or the contract is invalidated if they remain, which are conditions related to matters outside the contract and their failure corrupts the contract, and includes: certificate on the contract, perpetuation, direct the guardian of the contract in the event that the woman does not reach the maturity.

Section IV: Controls for Proving the Marriage Contract:

Registration of the marriage contract in the competent court: (Submission of a statement without a stamp containing the identity of the devotees, their age, the amount of dowry, and the absence of a legitimate impediment to marriage, provided that this statement is signed by the devotees and documented by the mukhtar of the locality or village or two persons considered to be its inhabitants).³⁰

Out-of-court marriage: It is established through:

- 1- A man's acknowledgement of a woman's marriage: (If anyone acknowledges to a woman that she is his wife, and there is no legal or legal obstacle and she believes in it, she proves her marriage to him by his acknowledgement) (31).
- 2- A woman's acknowledgement of marriage to a man: (If a woman confesses that she married Flana and her sincerity in her life and there is no legal or legal obstacle proved the marriage between them, and that her sincerity after her death does not prove the marriage) (32).

Section V: Prohibitions in the Marriage Contract: (The validity of marriage requires that a woman is not legally forbidden to anyone who wants to marry her) (33), and the reasons for the prohibition are divided by considering the type of prohibition, namely:

- Prohibition of life imprisonment: its causes: (kinship, affinity and lactation). (34)
- Temporary prohibition: its causes: (combining wives over four, non-heavenly religion, divorce three, attachment of others to a nikah or several, marriage of one of the forbidden with the establishment of the other marriage). (35)

Section VI: Controls on the obligation of dowry: (The wife is entitled to the dowry called the contract, if it is not named or exiled at all, she has the dowry of the proverb)(36), and its cases are: (The wife is entitled to all the dowry called entry or the death of one of the spouses, and she is entitled to half of the dowry by divorce before entering)(37), and its controls:

- 1- The dowry must be paid to the wife and shall not be forfeited for any reason unless she waives it herself.
- 2 - The dowry must be named as an amount in the case of the contract.
- 3 - Compensation with the dowry of the parable in the event of non-naming or exile in the first place.

- 4 - The obligation of the dowry named in full after the completion of the correct contract, or the death of one of the spouses.
- 5 - The obligation to half the dowry named in the event of divorce before entry.
6. The dowry named, or the dowry of the parable must be less than after entering into an incorrect contract (38).
- 7- The dowry shall fall in the event that the dowry is not properly named, and a valid contract is not entered.

Section VII: Controls on the obligation of alimony for the wife: (Alimony for the wife shall be imposed on the husband from the time of the correct contract, even if she resides in the house of her parents, unless the marriage demands that she move to his home and she refrains unjustly)(39) The alimony shall not be forfeited, but: (The maintenance of the wife who is not disobedient shall be considered a debt in the husband's possession from the time of the husband's abstention from the tunnels)(40), and its elements: (include food, clothing, housing, supplies, the doctor's fare to the extent known and the service of the wife whose likes have a certain amount)(41), (and the assessment of alimony for the wife) According to their cases, her husband shall be left and insolvent (42), and her controls:

- 1 - Alimony is the right of the wife over the husband from the time the correct contract is concluded.
- 2 - Residence in the home of her parents does not forfeit alimony in case of the consent of the husband.
- 3 - The loss of the right of alimony on the husband in the event that the wife refuses to obey the husband without a legitimate excuse or justification. (43)
- 4 - Alimony is considered a debt in the husband's possession in the event that he refrains from spending.
- 5 - The elements of alimony: housing, food, their supplies and the doctor's wage to the extent known, and the service of the wife whose likes have a certain amount.
- 6 - The husband's status is the criterion for estimating the wife's alimony, so it is subject to increase and decrease.

Section VIII: Controls for the Lifting of the Marriage Contract: Divorce: It is the lifting of the marriage restriction immediately or in the event of a special term, or what is in its place(44), (Divorce lifts the marriage at the rhythm of the husband or wife if entrusted or delegated or by the judge, and divorce does not occur except in the form prescribed for it by law) (45). Also, the divorce of the following persons shall not take place: 1- Drunk, madman, moron, coercion and anyone who has lost discrimination from anger, sudden misfortune, old age or disease. 2- The patient is a disease of death, or in a situation in which death is predominant if he dies in that disease or condition and is inherited by his wife) (46). And its controls:

- 1 - Divorce shall lift the registration of the marriage contract by agreement of the parties or by the desire of one of them.
- 2 - It is valid to authorize or authorize the dissolution of the marriage contract in the rhythm of divorce.
- 3 - The divorce must be committed by an explicit word of law or custom, even if it is suspended on a fulfilled condition.
- 4 - The situation of the husband shall be taken into account in the event of divorce, whether she is in purification or not and whether she is pregnant or not Sharia.
- 5 - Divorce does not occur in the event of loss of mind or perception due to a symptom.
- 6 - Divorce shall not occur in response to his intention to prevent inheritance from the wife in

the event of illness and death.

4. Conclusion

- 1 - Islamic law has defined controls for the application of Sharia provisions to the taxpayer, which are the reason for changing the provision from permissible to prohibition or vice versa in case of violation.
- 2 - The controls are specialized in each subject and vary according to what they are specialized in, and their loss violates the terms of the contract and corrupts it, and if it is not corrected it is invalidated.
- 3 - The legal articles in the law of personal status were built on a legitimate basis, and in it there is a wide range of opinions that are subject to a presumptive document that is subject to the jurisprudence of jurists and doctrines of jurisprudence, and whose law to ward off spoilage is preceded by bringing interest.
- 4 - The parties to the marriage contract shall have effects of rights and obligations, subject to controls in the elements and conditions of the contract.
- 5 - The provisions in the marriage contract are based on a jurisprudential law, and those who violate the principles of the wise Sharia are not counted.

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