

A Comparative Study of the iddah judgments in Which there is A difference between Islamic Jurisprudence and Jordanian Personal Status Law

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Abstract: The problem centers on the difference between a woman whose husband has died and her husband In the provisions of the iddah, as each interprets from his point of view and knowledge. There is a need for a clear-cut reference to be based on that. The study aims to clarify the provisions of the iddah in Islamic jurisprudence and the Jordanian personal status law, and to clarify their important financial rights, and to identify the position of the Jordanian personal status law from the provisions of the iddah on issues that agreed with Islamic jurisprudence, and issues in which it contradicted jurisprudence. Moreover, this study adopted the qualitative approach by extrapolating the scientific material from the jurisprudence books of the four schools of jurisprudence, and the Jordanian Personal Status Law, and the comparative approach by comparing the schools of jurisprudence by mentioning the sayings of the jurists, and the position of the Jordanian Personal Status Law, then analyzing the articles of the law. The most prominent findings of the research were that disagree the Jordanian Personal Status Law Islamic jurisprudence in the issue of the woman whose husband has died going to her work at night, where Islamic jurisprudence, based on a fatwa from the Jordanian Ifta Department, permitted her to go out to work at night, while the Jordanian Personal Status Law did not allow her to do so. On the other hand, this study contributed to providing scientific material for workers in the Jordanian Sharia courts, the Jordanian Sharia judiciary, and students of Sharia science.

Key words: iddah judgments, Islamic Jurisprudence, Jordanian Personal Status Law.

I. Introduction:

Allah Almighty has honored man, based on the Almighty's saying {walaqad karramna bani adam} [Al-Isra': 70]. This honor came to distinguish man from the rest of the creatures, and Allah Almighty has legislated marriage between human beings as a manifestation of divine honor for them, because in this marriage there is peace, mercy, and tranquility. Preserving offspring, preserving humanity from extinction, and preserving life from diseases transmitted to humans if he establishes illegal relations outside of marital life.

however, human nature requires that there be differences between couples, these differences lead to separation, such as divorce or annulment. Sometimes this separation occurs without a dispute between the couples, such as the death of the husband or wife, and here this separation entails special provisions related to the husband or wife.

So, Islam has organized people's lives and their dealings and distinguished them over all other creatures, made marriage a Sunnah for them with its rulings, and made the jurists complete chapters detailed in its rulings and its consequences, and that one of its consequences in the organization may occur divorce is a legitimate solution to resolve disputes and search for a new beginning.

The Islamic Sharia also organized people's lives by making the consequences of divorce related to the husband and wife. There is a need for an iddah between the divorced and the divorced woman. The jurists have followed the provisions of the iddah and detailed them from its main sources, which are the Qur'an and the Sunnah, until the approach became clear to those who followed it.

This study came to show the provisions of the waiting period in Islamic jurisprudence and the Jordanian Personal Status Law No. (36) for the year 2010, for what is related to this subject of very important doctrinal issues, whether it is the iddah of revocable divorce, or irrevocable, or it is the iddah of death that entails its provisions such as the maintenance of the waiting period, custody, breastfeeding, and inheritance.

II. Research problem:

The problem is concentrated in the difference that occurs between the woman and her husband in the provisions of the iddah, as each is interpreted from his point of view and his knowledge, so there must be a clear-cut reference that depends mainly on that, and several things are branched from this, namely:

1. Clarifying the difference that occurs between people in the provisions of the iddah, as each is interpreted from the point of view of his opinion and knowledge, so there must be clear and well-defined references based on that.
2. Explanation of the difference of jurists in the provisions of the iddah, and this indicates the breadth of this religion and Allah's mercy to the worlds, as this indicates a vast jurisprudential wealth that the jurists gathered from its established sources and derived it from their understanding of the Book of Allah and the texts of the purified Sunnah.

III. Research Importance:

The importance of this research appears in dealing with an issue inherent in the reality of the life of the Islamic nation, which is the iddah. Either it is caused by divorce, or husbands' separation from their wives due to death, and in both cases these divorced women or those whose husbands have died in the iddah entail special provisions for them, it is necessary to know these provisions clearly and in detail.

Research objectives and justifications for choosing it:

The objectives of the research and the justifications for its selection are as follows:

1. Getting to know the provisions of the iddah in jurisprudence and the Jordanian Personal Status Law, and clarifying her financial rights and important consequences.
2. Seeing the huge jurisprudential inventory of the jurists who followed the rulings of the iddah in detail until they clarify the finer details in them.

IV. Literature Review:

There are many studies that dealt with the iddah in Islamic jurisprudence, and in some Arab personal status laws, among which we mention the following:

- Study: Saad bin Barqa Al-Anzi, entitled: "Marriage and Divorce in the Kuwaiti Personal Status Law, Part One", Ph.D. Thesis, Al-Zaytoonah University, Tunisia, 1990 AD. This study dealt with the causes and effects of divorce, whether the effects related to marriage, or the provisions of the iddah and its effects.
- Study: Amr, Abdel Fattah Ayesh Abdel Fattah, entitled: "Applications of Sharia Policy in Personal Status" Ph.D. Thesis, University of Jordan, Amman, Jordan, 1994 AD. This study dealt with the applications of Sharia policy in personal status that the developments or contemporary issues whose opponents are not mentioned in a text from the lawgiver are endless, the legal policy has dealt with it fully in a way that achieves the interest of the nation in every era and environment. Contemporary jurists must confront such developments, because closing the field of ijthad and stagnation on the text contradicts the eternal Sharia and contradicts the rulings of legitimate politics. However, I see that collective ijthad in this era directs legitimate politics more than individual ijthad, due to the large number of branches of science and knowledge, and the impossibility of comprehending the sciences of the era by individuals. In view of the diversity of jurisdiction in various aspects of life, collective ijthad is the guarantee of achieving the interest on
- Study: Al Ali, Ghanem Muhammad Shaheen Ghanem bin Humaid, entitled: "Provisions of Number in Worship and Personal Status: A Comparative Study of the Law of the United Arab Emirates" PhD Thesis, Omdurman Islamic University, Sudan, 2008. This study dealt with the meaning of the number and the origin of its legitimacy, and this study was divided into two chapters that dealt in the first part with the provisions of counting in worship, and in the second part it dealt with the provisions of the number in personal status, where it dealt with the number in marriage, divorce and iddah.
- Study: Mohammed bin Rashid Al-Anan, entitled "Provisions of term in Islamic jurisprudence" PhD thesis, 2000 AD. This study highlighted the element of time in the provisions of Islamic jurisprudence in general, among them some of the provisions on marriage, where they are dominated by the nature of lack of detail, it has dealt with some issues relating to time from each of the jurisprudential chapters.
- Study, Suleiman bin Ajlan bin Ibrahim, Al-Ajlan, term and its impact on personal status, PhD thesis, Omdurman Islamic University, Sudan, 2011 AD, this study dealt with the impact of the term on marriage, the effect of the term on divorce, and the effect of the term on the iddah.
- Study: Al-Sharafat, Marzouq Muhammad Suleiman, entitled: "Tribal Custom in Personal Status Issues: A Purposeful Jurisprudential Study", PhD Thesis, University of Jordan, Amman, Jordan, 2014. This study dealt with the images of the clan custom in personal status issues in the Jordanian society, and it showed the custom in general, in terms of its concept, the concept of the clan custom, its validity and legitimacy, its types, and the controls for working with it. Pictures of the clan custom in the engagement and the preludes to marriage, its pictures in the conditions of marriage and its effects, pictures before, during and after the marriage ceremony,

then an explanation of the types of marriage and its provisions, then it showed pictures of the clan custom in the difference of marriage, such as divorce, iddah, taking back, defects that permit the separation between couples, engagement or marriage, the iddah marriage, as well as the images of clan custom in the rights of children resulting from marriage, such as lineage, breastfeeding, and custody. The images of clan custom showed in wills and inheritances, such as wills for some heirs without others, types of wills, depriving females of inheritance, and some issues of blood money. This thesis was concluded in a statement of the most important findings of the study.

- Study: Abdul Rahman Muhammad Abdullah Al-Hayani, *The Impact of Time on the Provisions of Annulment of Marriage, Divorce and Iddah*, Ph.D. Thesis, International University of Islamic Sciences, Amman, Jordan, 2016. The research dealt with a topic, the impact of time on the provisions of annulment of marriage, divorce, and iddah. And what follows, the effects, and the research included everything related to the effect of time on divorce, annulment, and iddah. The study aims to address family problems, and show the importance of time in the provisions of annulment and divorce, and that this study was not studied in a separate topic. Moreover, the research concluded that there is a close relationship between time and the provisions of annulment and divorce, and these provisions do not deviate from the time factor, and that the wife has the right to annulment when harm is caused to her, and the man has the right to divorce, all of which are linked to time, as well as the iddah that the woman is committed to and does not leave her except at the end moment from the end of its allotted time.

V. Research Methodology:

In this research, the researcher relied on the following methods:

1. The qualitative approach by extrapolating the scientific material from the mothers of jurisprudence books from the four schools of jurisprudence, and the Jordanian Personal Status Law.
2. The comparative approach by comparing the schools of jurisprudence with mentioning the sayings of the jurists, and the position of the Jordanian Personal Status Law, then analyzing the articles of the law.

VI. Findings

The most important findings of the study included:

- 1) The jurists are unanimous in most of the reasons for the necessity of the iddah and its provisions, because most of these provisions are established in the Holy Qur'an and the honorable Sunnah, and the Jordanian Personal Status Law has derived its texts from Islamic jurisprudence, It also included the provisions of the iddah and singled out a special chapter for it, but the Jordanian Personal Status Law when it was issued was not accompanied by an explanatory memorandum explaining those texts, and if there are some explanations for this law.
- 2) The basic principle in the iddah of divorce is to stay in the marital home and not to leave her home day or night. In this case, she must adorn herself and appear in front of her husband until he desires her, and this is a reason for the return of the marital relationship between them. If the divorce between them is revocable, because the Noble Qur'an and the honorable Sunnah of the Prophet commanded that, in order to preserve marital life, and because the revocable divorce was found in order for the spouses to review themselves before the expiry it.
- 3) the jurists agreed that the iddah of the deceased husband is about preserving her dignity, preserving herself, preserving her rights, and caring for moral and human values that aim in their entirety to achieve the religious and worldly interests of the woman, and that the woman's reverence in the marital home is a veneration of the husband's right and an expression of grief for him and consolation for his family, and a statement of the sanctity of the marital relationship, so that the woman does not observe iddah in anyone other than the marital home unless there are reasons that prevent her from taking the iddah in marital home. For example, if the deceased husband's family asks her not to take iddah in the marital home, or if the woman does not feel confident in herself in the marital home.
- 4) It is permissible for a woman whose husband has died during the waiting period to do all that is permissible for her outside the waiting period, this includes talking to women and men from her mahrams and others, the condition of adopting the legal guidelines that Allah Almighty and His Messenger, may Allah bless him and grant him peace, commanded.
- 5) Taking into account the social conditions of the woman in the iddah in which she lives, and she lives in new experiences that she coexists with.

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