

**Chapter 4 – The Dissolution of Marriage**  
**Section 1 – Divorce**

**Article 34**

- 1- Divorce means to sever the bond of marriage. It is done by the man, the woman, any authorized representative or the judge. The divorce must be performed according to the Shari'a.
- 2- A proxy is not accepted in the procedures of social investigation, arbitration and divorce<sup>11</sup>.

**Article 35**

No divorce may occur with the following people:

- 1- The drunk, the insane, the mentally deranged, the compelled, and any person who has lost the capacity to make a sound judgment due to anger, a sudden disaster, age or illness.
- 2- Any person who has a fatal illness, or who is in a state that is most likely to lead to death. If the husband dies because of that illness or state, his wife inherits his legacy.

**Article 36**

No divorce takes place if it is incomplete, conditional or under the form of an oath.

**Article 37**

- 1- The husband performs the divorce by pronouncing three repudiations.
- 2- Three verbal or gestural repudiations pronounced at once will count as only one divorce.

**Article 38**

Divorce is divided into two kinds:

- 1- The revocable divorce which allows the husband to return to his wife during her waiting period (*iddat*) without a contract. The resumption of marriage shall be established the same way a divorce is established.
- 2- The irrevocable divorce is of two kinds as well:
  - a- A minor irrevocable divorce (*talaq ba'in baynounatun sughra*) which allows the husband to marry his divorcee with a new contract
  - b- A major irrevocable divorce (*talaq ba'in baynounatun kubra*) which forbids the husband to marry the divorcee whom he has repudiated three separated times and whose waiting period has expired.

**Section 2 – Legal Separation**

**Article 40**

Both spouses have the right to ask for separation for any of the following reasons:

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<sup>11</sup> Article 34 was repealed and replaced by virtue of the 5<sup>th</sup> amendment law № 156 of the year 1980.

- 1- If one of the spouses injured the other or the children in a way that makes marital life impossible to continue. Considered as injury is addiction to alcohol or drugs. Addiction must be proved in a report prepared by a competent, official medical committee. Another kind of injury is the practice of gambling in the marital house.
- 2- If one of the spouses committed infidelity. Considered as infidelity is the practice of the act of homosexuality in any form.
- 3- If the contract of marriage was concluded before one of the two spouses has completed his 18 years of age, without the consent of the judge.
- 4- If the marriage was concluded outside the court by coercion, and marriage was consummated.
- 5- If the husband marries another wife without the permission of the court. In this case, the wife shall not institute the penal suit by virtue of paragraph 1 of item A of article 3 of the penal procedure code № 23 of the year 1971, according to paragraph 6 of article 3 of this law<sup>12</sup>.

#### **Article 41**

- 1- Both spouses have the right to ask for separation when a dissension arises between them, whether before or after consummation.
- 2- The court shall conduct an investigation into the reasons for dissension. Once the presence of a dissension is verified, the court appoints two arbitrators – if they are available – one from the wife’s family and the other from the husband’s to try to resolve the dissension and reach reconciliation. If arbitrators from families are not available, the court shall authorize the two spouses to nominate them, and if they failed to agree on them, the court nominates them itself.
- 3- The two arbitrators must deploy serious efforts to reach reconciliation. If they fail in their mission, they submit the case to the court revealing to it the party that was proven to be responsible for the dereliction. If disagreement arises between arbitrators concerning that party, the court shall assign a third arbitrator to join them in their effort.
- 4- A- If the court is certain that dissension is still ongoing between the two spouses and it failed to reconcile them, and the husband is refusing to grant his wife divorce, it has the right to separate them.  
 B- If separation takes place after consummation and the wife is the one responsible for the dereliction, the deferred dowry ceases to be effective, whether she is the plaintiff or defendant. And if she has collected the entire dowry by then, she would be bound to retribute no more than half of it. However, if it is proven that both parties are responsible for the dereliction,

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<sup>12</sup> Sections 2, 3 and 4 of the fourth chapter were repealed and replaced by the current text by virtue of the second amendment law № 21 of the year 1978. This amendment also included the replacement of articles 40/45.

This amendment stipulates that section 5 of the fourth chapter would be a third section in it. The expression (considered as infidelity is the practice of the act of homosexuality in any form) was added by virtue of the seventh amendment law № 125 of the year 1981. The text of paragraph 1 of article 40 was repealed and replaced by the current text by virtue of the tenth amendment law № 5 of the year 1986.

then the deferred dowry would be split between them according to the percentage of dereliction attributed to each one of them.

C- If separation takes place before consummation and the wife is proven to be responsible for dereliction, she would be responsible for restitution of the dowry she had collected from her husband.

#### **Article 42**

If the separation lawsuit filed for one of the reasons mentioned in article 40 of this law is dismissed because the reason behind the separation request was not deemed valid, and if a second suit of separation is filed for the same reason, the court shall resort to arbitration in accordance with article 41.

#### **Article 43**

First – The wife has the right to ask for separation for one of the following reasons:

- 1- If the husband is facing an incarceration for a period of three years or more, even if he can still provide for her needs.
- 2- If the husband has abandoned his wife for two years or more without a legitimate reason, his whereabouts are known, even if he can still provide for her needs.
- 3- If the husband did not ask his wife, with whom marriage was not consummated yet, for wedding for two years after the conclusion of the contract. The husband's demand to wed his wife shall not be accepted if he did not fulfill her marital rights.
- 4- If it turned out that the husband is impotent or became impotent and is unable to perform his conjugal duties, whether for physical or psychological reasons, or if he was afflicted with impotence after consummation and it was proven that it is impossible for him to recover based on a medical report prepared by an official competent committee. However, if the court sees that the reason behind impotence is psychological, it shall postpone separation for one year, during which the wife shall not deny her husband the physical relationship.
- 5- If the husband was infertile, or became infertile after marriage and the wife does not have a living child from him.
- 6- If the wife discovers after the conclusion of the contract that her husband is afflicted with a disease that makes sexual intercourse inevitably harmful, such as leprosy, tuberculosis, syphilis, insanity; or if he attracted later one of these diseases or the like. If the court finds out, after medical examination, that the disease is likely to be cured, it shall postpone separation until the disease goes away, and the wife must abstain from sexual intercourse with her husband throughout the whole period of postponement. However, should the court discover that the disease is unlikely to be cured within a reasonable period and the husband refrains from granting his wife divorce and the latter insists on her request, the judge shall rule in favor of separation.
- 7- If the husband abstains from spending on his wife without a legitimate excuse, after granting him a maximum respite of sixty days.
- 8- If it was impossible to collect the alimony from the husband because he had disappeared, or had been absent, missing, or sentenced to more than a one year term of imprisonment.

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9- If the husband refrains from settling the fixed cumulated alimony, after being granted a maximum respite of sixty days by the execution authority.

Second – The wife has the right to ask for separation before consummation. In this case, the court's judgment shall adjudicate separation after the wife returns to her husband the entire amount of the dowry she had collected from him in addition to all the money and expenses he had incurred for the purposes of the marriage and which he can prove.

Third –

A- The Iraqi woman has the right to seek separation from her husband if the latter has been staying in a foreign country for no less than three years and he is a national of this country; or because he is forbidden or abstaining from entering the country.

B- The certification of the competent official authority that the husband has been staying abroad, for the purposes of this paragraph, replaces the notification procedures he is usually entitled to, provided that the judgment rendered against the husband is published in one of the local newspapers.

Fourth –

A- The wife of a person who has been officially declared as missing has the right to seek separation from her husband through the court four years after he is declared as missing. The court shall verify the fact that the husband is still missing in the same way it initially verified that he was missing and then it may render the judgment of separation.

B- After acquiring the judgment of separation, the wife of the missing person shall observe a waiting period (*iddat*) of four months and ten days<sup>13</sup>.

#### **Article 44**

Establishing the reasons of separation may happen by all means of evidence – except for the cases for which the law has specified certain means of evidence – including coherent taped testimonies. It is left to the court to decide on the coherence of the tapes.

#### **Article 45**

Separation in the cases mentioned in articles 40, 41, 42 and 43 is considered a minor irrevocable divorce (*talaq ba'in baynounatun sughra*).

### **Section 3 – Voluntary Separation (Khul')**<sup>14</sup>

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<sup>13</sup> Paragraph "Third" was added to article 43 by virtue of Revolutionary Command Council resolution № 1128 of September 9, 1985. A new paragraph – Fourth – was added by virtue of the 14<sup>th</sup> amendment law № 8 of the year 1994. Item 3 of the Fourth paragraph was subsequently added by virtue of the 15<sup>th</sup> amendment law № 25 of the year 1994.

<sup>14</sup> Section 5 of the Chapter 4 was considered a third section for the same chapter by virtue of the second amendment law № 23 of the year 1978.