

A Comparative Study of Husband Losses of Wife in Divorce Court of Wife from the Perspective of Islamic Jurisprudence and Law of Afghanistan

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Abstract: Family is the most important and most fundamental social institution from the perspective of Islam, in this sacred institution with the realization of marriage marital relationship created between men and women and the rights and obligations for each achieved than others; so that while the consistency of men over women, they were obliged to associate good and reasonable with women; therefore any damage and harm the holy legislator has been prohibited but in some cases such damage is caused dissolution of the marriage license but whether any harm caused dissolution of the license or some of its variants, requires careful discussion and current literature deeply about bookman put this issue from the perspective of Islamic schools of jurisprudence and law and concluded that only in case of impossibility or exhausting the losses wife, the dissolution of the marriage the wife was reached.

Key words: Loss, dissolution of the marriage, husband, wife, spouse rights, duties of the couples

INTRODUCTION

According to Islam, family is the most important and most sacred institution in society that the husband and wife concluded two pillars form the basis for the development of this institution. Given the importance of this institution, holy legislator mapped out for each of the spouses rights and duties of counterfeiting and the ways to attain peace and comfort. The Holy Quran, on the one hand and the common good to socialize men and women is required on the other hand, the definition of efficient tools for solving problems between couples and within this framework, the mandate and the royal couple is known to chastise his wife for granted; holy legislator also called the wife and attempt to gently paired with his consent according advisable to provide a common life, in fear for his wrong and behavioral abnormalities, However, if even against the wife to do their homework and not to harm his unconventional behavior so that shared life impossible or flames blazing and the difference between them strength to be conflict can the couples are calling for a judicial divorce on the basis of that loss or not. If allowed, would subtract the type of loss and is prove it. To discuss the issue, the views of the Shiite and Sunni scholars, the attitude of the Shiite personal status law in Afghanistan in the nature of losses its instances and we will investigate ways of proving it.

Concept of loss: Loss means defect right (Farahidi, 2004) abuse including self-abuse and abuse of a minimum of Science and grace of the body arising from the absence of a member or loss of property and honor (Esfahani and Mohammad, 1983) anti-interest (Skate and Ishaq, 1991; Manzur and Mukarram, 1993). Bottlenecks and approaching (Farahidi, 2004) losses damages, loss, damage, injury, damage and loss (Azarnoush, 2012). The term also, the jurists (Najafi, 1983) definition of losses not but in some cases impose losses on each of the couples the right to terminate the contract for another are known (Shobeiri and Musa, 1998; Makarem, 2003; Ismail, 1989) and have the same etymological meaning enough, perhaps the sufficiency of funds and lack of definition of terms, implies literal meaning of religious meaning in religious affairs. It should be noted that the jurists in the definition of the concepts used in jurisprudence, one of the following methods have been adopted. In some cases, have provided a clear definition of a word such as the definition of adultery, sodomy and so on. In some cases, the above examples will suffice. In some cases it is known penalty. In this discussion, jurists follow the second method has replaced the definition of harm, exemplified by for example, are cited. For instance, some jurists Maliki wrote: "The disadvantage, something that legally is not permitted such as leaving the wife without the legal wife and Naszagftn touching it to his father such as a dog girl, a girl or a girl cursed infidel (Ahmad, 1998), Zakariya

Ansari Shafei wrote: (And harmless) or cursed at him, (for no reason forbade him) about it (Zakariya, 1997, Ahmad, 1998). If the abandoned van left disobedience and only hit when it is severely beaten and outrageous. (Kashani Hanafi, Abu Bakr ibn Masood, Badaa'i Sanayeh. Ibn Qudama said: As for desertion in the speech may not be more than three days. It was narrated from Ahmad said the woman disobeyed her husband hath not beaten severely hit. Zuhayli (2006) has defined losses such as: "Harmless, teasing the wife of the couple by speech or behavior such as swearing drum, unlike the ugly vilify dignity, severe and painful beating forcing the forbidden religious practice and the like, angry and leaving without cause. In general it can be said harm, harm to the wife or vice versa couples is no different from the verbal harassment such as ratios unfair and insulting or behavior such as touching and alimony nothing. Hanafi jurists, Abu Bakr Kashani writes: What is the multiplication painful and humiliating did not offer an explanation. Despite many differences of opinion in this case it may be recalled that the injured individual losses, benefits in terms of the natural and conventional Failure to prevent, earned and the effect of the exclusion is prevented. The effect of material losses on its religious and legal ruling, it is not discussed; both Islamic law and Muslim law, the losses can be offset provision and need to know that this provision in the current debate, it is possible to divorce and legal differentiation be achieved. What's discussion and analysis needs, spiritual losses. Spiritual losses, loss of reputation or failure of one's social prestige which is respected prestige and the suffering caused by the introduction of losses both financial and physical harm to the person or whatever that might be associated with the mood of a person other than his body. Therefore, each person according to their mood and social interaction, spiritual feelings with them, interact with others and be respected or with these feelings come to relax and any damage to them, subject to spiritual losses. However, the question is, spiritual losses caused by unusual behavior redeemable paired with the wife or not. It seems, spiritual loss, not only material losses is no less remarkable but what is even more important because in Muslim societies, Muslims hold their value for their social dignity, to not consider the material. For example, a woman may leave her alimony from the husband tolerate but cannot accept insulting and cursing her husband. Some legal scholars a comprehensive definition of harm to the detriment of both has noted: "Harm assault with an object or property or emotions (feelings) or dignity or honor or any of the other interested person is entered as is obvious, physical and financial abuse, physical harm and injury to feelings, dignity and human dignity, spiritual losses.

HARMS OF HUSBAND TO WIFE

If the couple through non-payment of alimony to the wife or clothing harm and interpretation of jurists, disobedience and exit from the area to be a man. In this issue of Islamic religious scholars disagree. Shafi'i jurists and jurists two Hanbalism and Sunnis, the right to claim the woman and the couple living next to someone trustworthy if the rulers of harm to the woman's husband returns couples living next to a trusted person to have adequate knowledge on the behavior of couples and to determine the harm husband wife and leave his ruling comply with the right to harm thereby. But the Hanafi and Maliki jurists of religion in order or decree harm or have expressed couple divorced woman or a compromise solution on the man have predicted. In terms of the Shiite and Sunni scholars pointed out: Some jurists have said, "If disobedience of the pair, i.e., women, the right to maintenance, clothing and the like it is the woman forcing her to live in his ruling and the righteous shall have the command of couples (Mohaghegh and Hassan, 1987). Shafi'i fiqh sources also said, "Even if disobedience is clear that the right to alimony, clothing and bed obligatory share of women and does not pay like it the ruling couples just living together with someone trustworthy returns to the enjoyment of the right woman. Hanbali fiqh states: "If a fissure occurs between couples, the governing investigated; if disobedience and non-compliance with the obligation of the couple appears they trusted companion ruling party to inform it of the harm to women and couples is a violation of the right to unlock it. And some Maliki scholars including Desouki has the same view. Unlike Shafi'i jurists, Hanbali and referring to the ruling Shiite who believe the wife can fix harm her husband and he also accommodate couples with a trusted person will act to fix a couple losses, religion Malikiyya, solutions losses in the supply of divorce on women and peace and the survival of men and women he knows. Hanafi jurists, very quick for disobedience and injurious man pointed to his wife but to express it have not paid the judgment. As is clear from these words, disobedience husband in Hanafite is widely accepted but that a woman's right to exercise what would take place, Hanafi is not a way against them. In this case, the field can be paired with financial demand of the wife and he is deposed or not, Hanafi, they not allowed to receive money for a evacuated. Ibn Najim writes, "it is right to take the property in this case is definitely forbidden because God said: "So do not take anything from him".

This verse, in a place where disobedience, only from the men. On the assumption that the two verses conflict,

prohibition of receiving money from women is fixed by cutting generalities because there is consensus on the prohibition of receiving undeserved Muslim property and on the other hand in keeping without a woman's desire, harm and put to benefit from the wealth woman against her relief from stiffness in holly that this is unlawful obtaining" (Mesri and Abraham, 1997). While, differences between Sunni religious scholars, it happened between Shiite and Sunni scholars, the wife has no right to demand subtraction. According to the detriment of non-payment, the woman left the observance of the right to food, clothing or sleeping husband cannot see a ruler and a judge and ask for it, your subtraction of man. It seems, Maliki jurists between the cases of men over women is clear disobedience and if the symptoms or reasons of the disobedience of man and confusion between the above two cases are mixed because the supply of divorce or financial reconciliation of men and women the financial man to woman to win his consent in the continuation of life no rational justification because divorce and reconciliation to the aforementioned method, allowing a double oppression of women. Therefore, jurists and religious Sunni Shafi'i and Hanbali such did not exclude the divorced wife and compromise a woman to a man are allowed. Novi has written in this regard: "If women due to illness or old age, signs of overt disobedience of the man and woman, good at giving up some of their rights such as the right to lay and so know, peace is permissible, because God has said: If a woman fears disobedience or have her husband turn away scared that there is no compromise between them". Sheikh Tusi said: "If signs of disobedience of man appears, in the sense that recall the man his wife to his bed, then he turned it and then turn away and refuse them and because of this negligence and apparent unwillingness of the man there's nothing wrong with their ease some right to be free from maintenance clothing and bed waive because Allah Almighty has said: "There are no objections to the two men that peace between the couple and that peace is better.

LEGAL AND JURISPRUDENTIAL ANALYSIS OF THE ISSUE

In Islamic jurisprudence several causes for dissolution of the marriage is recognized as one of the causes is loss, Muslim jurists under the conditions referred to a woman's right to demand divorce ruling if deemed justified his demand forcing man to divorce ruling. If the husband refuses to divorce, the husband ruling from the current divorce (judicial divorce).

Imamiyah jurisprudence: The loss of the sense of persecution that the life or mine or emotions or human dignity or honor is entered, law and its consequences such as subtraction. When times that severe loss of speech and behavior is large so that the continuation of married life is too difficult and unbearable. This type of loss, in Jurisprudence is an example of hardship and according to the rule "negation fault", the woman can ask the court to be useful differentiation and divorce. But if the loss is mild and tolerable, divorce the wife does not seem justified but in such a case, the court required the couple to settle in the vicinity of trusted man and that in this way, to meet the detriment of the rights of husband and wife are deals. Famous view among jurists that judges in the context of masculinity, freedom and justice by the ruler and judge for reconciliation or subtraction is selected. To assert that pierced jurists argue that involves judgments as to the absolute, cancel the judges and imams addressing Fabosoa couples realize is not related to the rulers and judges. Otherwise, instead of the plural verb "Fabsva, Fabosoa and said the verdict, the couple's rebuke. Of course, some other jurists, one of the relatives of the couple and one of the relatives of the wife to the man and woman are chosen as a judge and the judge, played no role in the selection of judges reformer. Despite this difference, the Shiite jurists are unanimous that the selection of two judgments of relative male and female couples, not advocate on their behalf. Governor's task at first, reconciliation between couples is common to prolong life. Otherwise, create differentiation, requiring consultation with the couple's Board of Governors. If the spouses on the basis of governors agreed to act as dispute settlement and fissures diminish and if opposed, had to be abandoned.

Hanafi jurisprudence: Ahnaf about the role of elected members, believes in substitution and duty to correct them have been considered among couples. In their view, if the jury were successful reform which is desirable But if you do not accept the view of the judges are left to their own devices to disarmament through peace or patience or divorce or to have overcome their quarrels and dissensions. Governors do not have the right to differentiate between spouses unless the spouses have the right to be delegated to them. In the event of delegation the board can only order to differentiate between couples who are not able to reconcile.

Shafi'i fiqh: Shafi'iyya this issue have expressed two opinions one people referee and Imam chosen by the ruler and the role they been authorized two: The role and duty of Governors reconciliation among married couples. Based

on first view, judges and law governing the right of *ijtihad* and act according to their own views. When can differentiate Board to make a decision ruling that fractional interest in disarmament know and agree to the divorce and in case of dispute, the judge selects two others until they agree on something. But according to the second view, the consent of the rulers and their views held during the subtraction is not a condition for reconciliation. The Shafi'i jurists, according to the first view with Ahnaf line and the second they are opposed.

Maliki fiqh: Maliki jurists on this issue with a view to jurists agree on the one hand and on the other hand, the Hanafi and Shafei substituent view. Their alignment with that task Shiite rulers in the first place, modify the couple and not by proxy on their behalf and, if not able to correct, can be no differentiation between couples are they represented in subtraction. The judge is required to sign the decree differential governors, though not in accordance with the discretion of the judge. But their opposition is also in reforming and subtraction couples the right to *ijtihad*. As a result of his *ijtihad*, modified criteria, what is the conclusion, reconciliation and peace between the couple or the fractionation and separation! However, the permission and consent of the spouses is not required. However, in the case of Subtraction Agreement, the Board of Governors in consultation with the couple and their consent to this, conditions.

Hanbali fiqh: Hanbali also considered the ruler's right and duty of rulers to correct them have been considered among couples by subtraction or disarmament; but what about the role of the substituent is two or government, based on the difference Narrated by Ahmad ibn Hanbal, two views have been put forward. The difference between the two is that in the case law of the spouses, the Board does not need to be signed by a judge without a warrant signed by a judge, fractionation occurs between couples. However, if the rule and the substitution of the judge, the rulers have to report to the judge's verdict and the judge's signature is necessary.

Afghan law: Article 183 of the civil code in cases where the wife is allowed to continue married life, coupled with a loss that put him in an intolerable situation, the wife go to court and prove this situation, the question subtraction. According to this article, the legislator loss of the wife of the couple has stated that one of the cause's differentiation. Afghanistan's Shiite personal Status legislator in Paragraph 2 of Article 141, the explanation of fractional entitlements or under hardship wife in case of loss of continuity of marriage the wife is

entitled dealt with explicitly in the case of loss or hardship has said. In clause 3 above, harm or hardship, "The situation that has been created by the husband and wife continue to live with and endure hardship and made it difficult and items after approval by the court, the sentence is considered hardship cases. Civil law as the overall losses it has refused to stop and explain things that have been mentioned as examples of losses, the uncertainty this causes is added. Whether those in civil law to the detriment of other materials have been proposed such as sexual and physical harm caused by defects in couples or loss arising from the withdrawal or refusal of alimony bed or leaving the pair of right speech, moodiness or the like, this is doubly true loss not mentioned in the article. First of loss charity cracks and faults, their causes and subtraction independent legislator has introduced it in the loss on this basis, something which cannot swear an oath to be placed. The other is that as a state legislator loss that leads to marriage movement was essentially static, continuity impossible to restore parity and this interpretation of harm as a result of demand for fractional entitlements by the wife, the wife's alimony losses arising from defects or cracks, not true. As above, although, consistent with the concept of hardship but hardship did not mention the civil legislator so that according to rule hardship, the right to demand fractionation and recourse to the court and the court allowed the wife and it shall be hardship. Shiite personal status legislator, however, to the detriment of hardship along with his wife and the two within the same attention and is mentioned synonymously but this remembrance is faced with two problems, namely the concept is vague and could be observed dichotomy between the concept and meaning. In addition, both the legislator, arbitration institutions have predicted schism between the couple if that is the turning point but the issue is that their forms, of the conditions and manner of selection of judges is silent forms in law enforcement and act on it. Another form of jurisprudence and civil law has been ignored, differentiation is based on hardship. Islamic jurists, losses of schism and disobedience to review and to the wife's right of access to court and demanded they not allow subtraction this way, the letter of the Quran implies providing solutions to the deterioration of mutual loss (fissure) or loss of disobedience couples through the institution of arbitration or settlement wife couples with someone reliable and obligation to offer couples the right to harm the woman and fix it. But if moral and material harm to the couple so hard to bear it impossible for the wife or he is beyond the concept o hardship realized and provided case to resort to rule denying fault. Therefore, the ratio between losses and hardship, general and

particular, in the sense that there is any harm hardship but not every distress and loss under hardship. Although, the two views have been expressed about the criteria for diagnosis of hardship private and kind but personal criteria for determining hardship to the kind of knowing it, the principle of fairness, the principles and the rule denotes caused hardship and loss of differentiation, consistent; whether, conventional life with some degree of loss and distress combined but the divine legislator as an example of this type of loss and hardship rule is not to deny sin and the only reference to the above rule about it, judgment and duty harm and has been prohibited under hardship and it works that the loss or severe hardship on the person responsible. Jurists, however, in recognition to its literal meaning of the term hardship and distress to the body and two stop members to the physical and psychological hardship as their own and on this basis, any problem that is qualified, however rule constriction effect and the duty to overthrow it liberates.

In discussing the issue, if a man his wife in the dark state of physical, mental hardship and inconvenience, the jurists on the basis of rule constriction go to court and the judge's wife and the wife's claim to have known subtraction. The origin of the right wife, verses, traditions and the reason is rational consensus of jurists, reflecting the perceptions of their rule as "the negation of hardship" and it mentioned in various legal fields used, the current issue of the examples. Four Sunni religious scholars, jurisprudents Shiite despite accords with the principles and reasons for Rule constriction in nature, the scope and based on the rule of jurists, not in terms of consistency. For them, the "negation of the rule of hardship" is not the name; reflect on the concepts and use cases that demonstrate the unity of the concept terms tht apply jurists.

Although the above titles, matching and signified uttered no legal evidence and inferred resources are not laws but each, a term that jurists-after scrutiny and reflection, mining verses and common sense-to facilitate reasoning has been forging; however the term "Rule hardship" to the above terms, the Premier somehow it seems. A direction that these verses and traditions as its basis both in words and in terms of concept and that's closely resembles, facilitate understanding of the rule for the audience. The other is that the so-called superiority, coupled with losses in the collapse and denial of duty under hardship and unusual ruling, states; unlike the Estyady titles of Sunnis who ruled under hardship and harm to explicitly be not denying nor with the principles of the rule, spiritual similarities. All that is used in the above titles hardship, thereby gaining easy or bottlenecks which develops the will or emergency field provides

permissibility prohibited. These concepts rather than be an observer to fix the fault, indicate emergencies and emergency decrees and have its own terms and not to do with the denial of sin.

CONCLUSSION

After thorough investigation into the reasons and opinions of jurists on the issue of harm caused dissolution of the marriage, we can say that the jurists to terminate the contract and impose losses on the blink marriage if the wife or husband, definiendum has been agreed and in many cases cause them to terminate the contract of the person authorized to enter losses on the cucumbers are known but careful research shows that for any loss caused dissolution of the marriage is not but right sequence subtract or judicial divorce on any of the various forms of losses, the losses are impossible or cumbersome. The harm both material and spiritual-could be subtracted if the wife of the couple that is severe, so that the continuity of marital life impossible or extremely difficult to return, otherwise, any loss conventional fractionation cannot be right.

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