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Addressing Domestic Violence in Iraqi Family Law: A Critical Analysis and Recommendations

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Abstract

This study delves into the complex interplay between domestic violence and the institution of marriage within the framework of Iraqi family law, focusing on the rights of wives to seek separation in cases of abuse. The research employs a legal analysis approach to scrutinize the existing legal texts, judicial applications, and their impact on marital relationships. Findings reveal a disconnect between the legislation and its practical application, with judicial discretion often prioritizing family preservation over the well-being of the wife. The study highlights the need for legal reform to explicitly grant wives the right to seek separation in cases of any form of domestic violence and advocates for the criminalization of domestic violence. Furthermore, it underscores the importance of conducting seminars and conferences to comprehensively address domestic violence as a societal issue and calls for increased research efforts in this domain. This research offers a critical examination of the status quo and proposes tangible steps towards safeguarding the rights and well-being of spouses affected by domestic violence within the Iraqi legal context.

Highlights :

- The study reveals a disconnection between Iraqi family law and the practical application of rights for abused wives, emphasizing the need for legal reform.
- Advocacy for explicit legal provisions granting wives the right to seek separation in cases of domestic violence.
- Emphasizing the importance of addressing domestic violence through seminars, conferences, and increased research efforts to protect the well-being of spouses.

Keywords : Domestic Violence, Iraqi Family Law, Marital Separation, Legal Reform, Judicial Discretion

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Introduction

The subject of domestic violence is one of the important topics that preoccupied many scientists and researchers in their research, and that view to address it is one of the phenomena that have spread widely in many societies, which has many negative effects on the individual and society, which is the phenomenon of violence between spouses, this phenomenon was not specific to a specific society, but has become a general phenomenon in many societies, where the reasons for this phenomenon are due to the fact that one of the spouses is characterized by violence and irritability,[1] where these behaviors were acquired from the upbringing on which they were raised, and many wives have great suspicion of their husbands, which generates many problems between them that may lead to great violence between them, it may be verbal violence or physical violence, violence between spouses is one of the phenomena that have become a threat to many societies, as violence has spread widely in family societies until the family has become one of the most violent institutions in society,[2] family feed may create an atmosphere of anxiety and insecurity, this greatly affects all family members, especially children, the phenomenon of domestic violence has received great attention at the Arab and international levels, especially in the field of psychological studies, due to the multiplicity of its causes and consequences on the individual and society, violence within the family environment may be considered a rapidly spreading global problem that affects all areas of society, greatly affecting the forms of human growth and development, for this reason, we will address in this research the definition of the phenomenon of domestic violence and how to address it and identify its effects on the individual and society and reach solutions to eliminate it[3].

RESEARCH IMPORTANCE

The importance of this research lies in the fact that it is based on discussing a very important topic, as the topic is based on discussing the topic of domestic violence and how to address this problem, violence is one of the things that greatly affect married life, and the increase in family violence leads to an increase in undesirable behaviors[4], which affects society negatively and therefore this study seeks to shed light on the phenomenon of domestic violence and how to address it, the importance of research is also reflected in shedding light on knowing the reasons that lead to the existence of violence in the marital home, especially directed to children and to the wife, it also seeks to guide the spouses on the seriousness of practicing domestic violence and the resulting psychological disorders for the wife and children[5].

RESEARCH PROBLEM

There is such a phenomenon in many in the Arab world and it is widely spread in our Arab world because research and studies have not discussed such topics, thus, the submitted research considers such a topic, therefore, I found that this research can be very useful in working on developing a program that would be based on solving the problem of domestic violence and developing an effective treatment for it[6].

RESEARCH OBJECTIVES

This research seeks to achieve many goals related to the phenomenon of domestic violence, one of these objectives that this research seeks to achieve is to identify the concept of violence, the concept of domestic violence, the causes of domestic violence, the consequences of the occurrence of domestic violence, and how to treat and eliminate this problem[7].

Method

An approach is followed around the use of the descriptive approach in this research by following many new methods which aims to reveal the actual facts of violence in the marital home and work on reading what revolves around disciplinary actions, analyzing them and providing data for its scientific importance.

Result and Discussion

THE FIRST AXIS / DEFINITION OF JUDICIAL SEPARATION

Since the study is related to the request for separation when domestic violence is available, it is necessary to refer to the concept of judicial separation in accordance with the Sharia and legal provisions and according to the following:

First: Terminological linguistic definition

The dissolution of the marital bond is in several descriptions, either the annulment that the marriage contract has been defective, such as the availability of perpetual or temporary sanctity between the spouses or the husband's unilateral will and is called divorce or by agreement of the parties and is called judicial separation or by a decision

of the court[8], which is the subject of research and is called judicial separation, all of the above-mentioned aspects of the dissolution of the marital bond shall be considered divorce, whether by the will of the husband, the agreement of the parties or a judicial decision, in accordance with article 45 of the Personal Status Law, from that, judicial separation, according to what was defined by some commentators of the Personal Status Law ((judicial separation is the dissolution of marriage registration by divorce signed by the judge at the request of the husband or wife when the legal reasons are realized)), from the foregoing[9], it is necessary to refer to the definition of divorce and briefly consistent with the need for research and according to the following:

First: Linguistic Definition of Divorce:

The Arabs cared a lot about the Arabic language because it is a language of derivation and enjoys vitality and keeping pace with life and it is the language of the Holy Quran and the vessel of enlightened Islamic thought, [10]so they had to care about it because its comprehensiveness is linked to the comprehensiveness of the Holy Furnace Sharia rulings, this is what we will notice in this requirement towards the word divorce, because divorce is a word derived from the origin of the triple verb divorced and its meaning in the language (release, and woman launches a divorce, it is divorced and divorced tomorrow, [11]Al-A'asha said: Whatever my neighbor Benny, you are divorced, divorced, divorced, and the camel is divorced from a camel sent in the neighborhood to graze from their side, that is, around them where it wants, it does not make sense if it goes away and does not step down in the theater, and she released the camel and divorced her, that is, she analyzed her head, so I sent her, and a divorced man means a lot of divorce for women), some linguists also stated that (divorce language is the solution of registration and release, a name in the sense of the source, which is divorce as peace in the sense of delivery and release in the sense of demobilization, or is the lifting of documents) also, (the name of the divorced: divorce, which is the removal of the restriction of marriage without compensation in the form of (divorce),[12] when a woman is divorced, there are two meanings, one of which is to dissolve the marriage knot. The other means leaving and sending. Whoever says that you divorced the people, if you leave them, the woman is divorced by opening and is divorced from the door of murder - and in the language of the door near - she is divorced without a ha'a. If they come with distraction, it is by way of interpretation. The Egyptian jurist Sayid Sabiq said that (divorce: taken from the release, which is sending and leaving, says: released the prisoner, if you dissolved his registration and sent him) from that we see that the linguistic definition of divorce is release or abandonment or release[13].

Second: Idiomatic Definition

The scholars of Islamic law have cited a number of definitions that agree that divorce is the lifting of the restriction and the dissolution of the marital bond, which is the removal of the marriage restriction without compensation in the form of divorce and the divorce of a woman has two meanings, one of them: the solution of the marriage knot and the other in the sense of leaving and sending among the jurists who said that divorce (is the lifting of the restriction of marriage with a special word expressly, sufficiently or by reference) it was also mentioned in another resource that divorce (Shariah) is the dissolution of the marriage contract with the word divorce and the like[14], the original before the consensus of the book as the saying of the Almighty (Divorce must be pronounced twice and then (a woman) must be retained in honour or released in kindness).[15] The Sunnah is: nothing that is halaal is more hateful to Allaah than divorce. Narrated by Abu Dawood with a correct Isnad. Al-Nawawi also defined it in his refinement as an act owned by the husband that occurs without reason and interrupts the marriage) was also said that (divorce, which is the removal of the restriction of marriage without compensation in the form of "divorce") one of the late jurists is a Sayid Sabiq who defined divorce (dissolution of the marriage bond, termination of the marital relationship) divorce was known before Islam, but it was not limited in number, but it was divorced for a man to sign it whenever he wanted and as many as he wanted, just as divorce in early Islam was without a number, and a man used to divorce his wife as long as he wanted from one to ten, and he would revise her in the iddah[16]. The Almighty said (Divorce must be pronounced twice and then (a woman) must be retained in honour or released in kindness) showed that divorce is three. He said it (twice) telling about two divorces, and they differed in the third, Ibn 'Abbas said: (or discharge with charity) and some of the followers said: (If he divorces her, it is not permissible for him until she marries another husband). The observation is that the jurists were unanimous in divorce resulting from the unity of the subject in the heavenly legislation contained in the Holy Quran and in the noble verses, including ((But if they separate, Allah will compensate each out of His abundance[17]. Allah is ever All-Embracing, All-Knowing.)) ((Women who are divorced shall wait, keeping themselves apart, three (monthly) courses.)) And his saying ((Women who are divorced shall wait, keeping themselves apart, three (monthly) courses.))And his saying ((Divorce must be pronounced twice and then (a woman) must be retained in honour or released in kindness.)) And he said: ((O Prophet! When ye (men) put away women, put them away for their (legal) period and reckon the period, and keep your duty to Allah, your Lord.)) And he said: ((O ye who believe! If ye wed believing women and divorce them before ye have touched them, then there is no period that ye should reckon. But content them and release them handsomely.)) And his saying ((For divorced women a provision in kindness: a duty for those who ward off (evil).))[18].

There are many resources and evidence in the Holy Quran on divorce and Surah in name of Surah At-Talaq [19]and this indicates the importance of divorce and its impact on building society and its impact on the march of the nation, as mentioned in many hadiths of the Prophet, including the saying of the Sharif (The most hated Halal to God is divorce) therefore, the terminological or legal definition of divorce is the definition contained in the text of Article 34 of the Iraqi Personal Status Law No. 188 of 1959, as amended ((Divorce is the lifting of the marriage restriction by the rhythm of the marriage or by the wife if she is entrusted with it and authorized or by the judge,

and divorce does not take place except in the form prescribed to him by Sharia)) what I see is consistent with the definitions given by the laws of most Arab countries and accommodates all the definitions referred to by Muslim jurists of various sects[20][21].

Third: Conditions of Judicial Separation

As I mentioned earlier in the first axis about the definition of divorce and judicial separation is considered divorce, therefore, the pillars of its conditions are the same as the pillars and conditions of divorce[22], and its pillars are manifested by the husband and wife and does not need the rest of the elements related to the formula or certificates, this is what distinguishes separation from divorce, and we can summarize this as follows:

1. In separation, the husband does not utter the form of divorce, but falls by a decision of the judge, but in divorce, the husband must pronounce the form of divorce specifically prescribed by Sharia.
2. Separation does not require witnesses if the marriage contract of the parties was concluded in accordance with the provisions of the Jaafari school, while in divorce it is considered one of the pillars of the validity of its occurrence at the front floor.
3. Separation does not require the wife's purification when it occurs, while it is considered one of the conditions for its validity upon divorce at the front time.
4. Divorce takes place from the time of uttering it in its legal form, while separation after the dissolution of the association shall take place as of the date of the issuance of the judicial decision to separate.
5. Upon divorce, the husband's presence at the divorce council is required, while separation is not required, the decision to separate may be issued without the presence or even knowledge of the husband when the pleading in the case is in absentia.
6. It is possible to resume married life without a contract or a new dowry in a retroactive divorce, while in separation, divorce is considered irrevocable and the parties are not entitled to refer to each other except with a new contract and dowry.

There are conditions that must be met by the husband and wife to accept the lawsuit for judicial separation according to the following:

Husband:

Litigation capacity, [23]which means the legal capacity required by the Iraqi Civil Law No. 40 of 1951, as amended by Article (105) thereof by eighteen full years, calculated from the date of his birth alive in accordance with the provisions of Article (45) civil, which considered that the beginning of the natural personality of a person and ends with his death, article (3) of the Law on the Care of Minors No. 78 of 1978, as amended, referred to the age of majority at eighteen full years as well, therefore, the capacity is referred to in Article VIII of the Iraqi Personal Status Law No. 188 of 1959, as amended, which is the capacity to marry by reaching the age of fifteen with the approval of the judge if he finds it necessary therefore, one of the applications of the Iraqi judiciary is that it is not permissible to accept the lawsuit from a minor and to marry, although this trend in jurisprudence is subject to controversy and discussion, including what the Personal Status Court in Al-Shaab neighborhood followed in its decision 2520/Sh/2010 on 29/8/2010[24].

Wife:

If she is a wife under a valid marriage contract[25], it is not valid to rule to separate a man and a woman who was not his wife at the time of filing the lawsuit, nor shall separation be ruled if she is an aggressor from a retroactive divorce or an aggressor from a definite divorce with minor evidence, this clearly shows that one of the conditions agreed upon unanimously is the requirement that the marriage is performed under the valid marriage contract, regardless of whether or not the wife enters[26].

Fourth: Request for Separation

Judicial separation only occurs on the basis of a request submitted by one of the spouses to the judiciary requesting a ruling on judicial separation, this is done by filing a lawsuit before the Personal Status Court for Muslims and the Personal Matters Court for non-Muslims, because the judiciary acts only at the request and in accordance with the provisions of the Civil Procedure Act No. 83 of 1969, as amended[27].

Fifth: The Availability of One of the Reasons for Separation Stipulated by the Law

No court can examine the separation lawsuit unless the applicant of the separation request, who is called (the plaintiff), indicates when filing the lawsuit, whether the wife or husband is the one who requested a separation ruling[28][29][30], he must specify his requests with one of the reasons for separation referred to in the provisions of the Personal Status Law No. 188 of 1959, as amended in Part Three, Articles 40-43, he identified two cases for the applicant for separation, the first is the request for common reasons for both spouses in the request for separation, and the second case is the wife's right only to request separation, and I will present to her as follows:

Article (40) of the Personal Status Law No. 188 of 1959, as amended, stipulates four cases under which one of the

spouses has the right to request separation, except for the fifth case, which concerns the wife exclusively, because it has been granted the right to request separation in the event that the husband marries a second woman outside the court, and the four cases are as follows:

1. If one of the spouses harms the other spouse or their children in a way that makes it impossible to continue married life.
2. It is considered as harm, addiction to the use of intoxicants or drugs, provided that the case of addiction is proven by a report from a competent official medical committee.
3. Gambling in the marital home shall also be considered harmful.
4. If the other spouse committed marital infidelity. And it is such as marital infidelity, the practice of the husband the act of sodomy, in any way whatsoever.
5. If the marriage contract was concluded before one of the spouses completed eighteen years without the consent of the judge.
6. If the marriage was made outside the court by coercion and entered into marriage.

B- Request for separation by both spouses due to disagreement between them and in accordance with the text of Article (41) of the Personal Status Law No. 188 of 1959, as amended, where it is stated in the paragraph of that article as follows: (Each of the spouses requests separation when a dispute arises between them, whether before or after consummation) then explained in the other paragraphs the mechanism of procedures for verifying the existence of the dispute and the methods of reconciliation between them and how to elect the two arbitrators for the reconciliation effort[31][32].

The Iraqi legislator had a commendable gesture when he specified some cases related to the wife in the request for separation, this is to protect it from the injustice that may be inflicted on it because it is still in the shadow of society[33], a being that is seen with a pity look that suggests its weakness, this view still exists even when applying for marriage, as some do not see marriage as pity for her, or that it represents the need of the home for someone to work in it, contrary to the heavenly and positive purpose of the marriage bond, in a decision of the Personal Status Court in which it refused to grant permission to a second wife because the husband provided justifications that belittled the wife and according to the reasons stated therein[34], The law specified these cases in Article (43), which will be the focus of this research, because most of what is related to domestic violence we will find embodied in the provisions of this article these reasons can be summarized in four main sections, as follows:

1. Deprivation of alimony
2. Deprivation of marital cohabitation
3. Deprivation of childbearing
4. Wife's request if there is no entry between them (wedding)

I will not explain it because it has saturated research in a number of studies and master's and doctoral theses, and those who seek more can see the books of commentators on the Personal Status Law[35].

Second Axis: Domestic Violence

Domestic violence is one of the types of violence that are used against women, as there are many types and forms because man by nature tends to use violence with self and with others, it was not limited to individuals, as violence took a collective path and still many humanitarian groups[36], whether in the form of parties or organizations, adopt violence as a method in its work this in turn led to the multiplicity of types and forms of violence, but they are almost limited to three topics, as follows:

1. Moral (psychological) Violence
2. Physical Violence
3. Domestic Violence

Each of the above branches out of it several forms in moral violence we find the threat directed at women to restrict their freedom of work and so on and be direct during marriage, as happens in Cameroon where the head of the tribe (500) women are married, in Iraq, girls are forced to marry against their will, in physical violence, there are many images of women against women and men against women, including suicide operations, kidnapping, murder, wounding and abuse, detention, rape and other scenes that have become daily and familiar in Iraq, in the third chapter of violence, domestic violence is the subject of research in this study[37], we find it one of the widest types of violence used in daily life, it is exposed to almost all women, whether they are wives, mother, daughter, sister or otherwise, and the presentation will be according to the following paragraphs:

First: Definition of Domestic Violence

Domestic violence is violence practiced within the family towards women, so it is necessary to define the meaning of violence in language and terminology, with an indication of its types, according to the following:

First: Linguistic and Idiomatic Definition

Violence in the language against kindness and stated in one of the dictionaries of the Arabic language that violence is the use of force illegally, as for the terminological definition of violence against women[38] it is broad and multiple according to its philosophical, moral, legal and social meaning, the concept of violence in law is the unlawful or unlawful use of force that leads to consequences related to the human body and freedom, which is physical violence and some violence has a moral form related to will, coercion and freedom of belief, this topic became of interest to researchers and scholars and a specialized science called violencology was found, its upbringing in the United Kingdom and after an important turning point in human history, violence against women was defined in a number of international conventions at the Beijing Conference on Women in 1995, and it was included in human rights and was not exclusively singled out[39].

Second: Domestic Violence in Iraqi Law

Iraqi law deals with violence against human beings (men and women) and does not specify a type of violence against women, according to what is stated in the punitive articles on abuse using violence, murder, detention, kidnapping and other acts that the legislator considered crimes and in accordance with the provisions of the Iraqi Penal Code No. 111 of 1969, as amended.

Violence as a concept has a broad scope related to politics, ethics, sociology, economics and law, therefore, I do not want to expand on it, and those who wish to benefit can refer to a number of sources and studies in this regard. Therefore, any coercion or abuse to which a woman is subjected within her family constitutes domestic violence, whether she is a wife, mother, sister, or daughter...Etc., Domestic violence is characterized by the fact that it occurs in secret and is not publicized because it falls within the family environment, which gives it a secret character, this was the focus of attention of international organizations and work to remedy its negative effects, and its causes are numerous, many of which, according to what researchers pointed out, are social[40], economic, and political factors.

Third: Characteristics of Domestic Violence

Domestic violence is characterized by a number of characteristics, some of which relate to the victim and the family environment, and some of which distinguish it in terms of legal description, including the following:

1. Domestic violence comes from the closest people to the victim in terms of kinship, in the subject of this study, we find that it comes from the husband who is considered to be from the same wife as the wife from himself according to the text of the holy verse (And of His signs is this: He created for you helpmeets from yourselves that ye might find rest in them, and He ordained between you love and mercy. Lo! herein indeed are portents for folk who reflect.)
2. Domestic violence is a personal issue that does not receive the attention of official institutions and does not deal with it as a crime.
3. Domestic violence is characterized as a hidden act, although it is often practiced.
4. Domestic violence differs from torture in that the first is not considered a crime, while torture constitutes a crime according to the provisions of Articles (333) and (424) of the Iraqi Penal Code No. 111 of 1969, as amended.
5. The act of torture is linked to the official function of the perpetrator, as it is not considered an act of torture unless it is issued by a person by virtue of his position, however, if he tortures his wife, even if he is an employee, it is not considered torture and is not subject to legal accountability except as stipulated in the general rules of the Penal Code.
6. The victim of the act of torture enjoys the benefits of protection and the request for compensation from the state, violence against women does not give them any of these guarantees, despite its magnitude and ferocity of its effects.

Second: Domestic Violence in the Personal Status Law

After referring to the concept of domestic violence, we wonder whether it has an impact on the Personal Status Law or is it exclusively in the Penal Code and other penal laws?

As I mentioned earlier, the law does not explicitly mention the word domestic violence, rather, it referred to the harm caused to the wife as a result of the husband's actions and gave her the right to request separation, and this right was mentioned in some articles of the Personal Status Law in force, and the matter was associated with the harm caused to the wife, therefore, I will present the concept of harm, the applications and provisions of the law in the Personal Status Law and the applications of the Iraqi judiciary in this regard[41].

The Concept of Harm

Harm is considered the physical image and the result that appears through the behavior of one person towards the other and the harm is known to some Muslim jurisprudence (It is an existential matter against benefit. Others said that the correspondence between it and benefit corresponds to nothingness and the queen, so it means that there is no benefit in a subject that is amenable to it). Legal scholars also defined it as the harm that befalls a person in his body, balcony, money or emotions. Among them is Dr. Suleiman Mark that what affects the injured in his body,

money, affection, dignity, balcony or any other meaning that people are keen on[42]. The definition of harm can be derived as what harms a person in material and moral respects. Based on the foregoing, harm is the harm caused to a person as a result of infringing on one of his rights and a legitimate interest, it is not required that the right that occurs be financially affected, such as the right of ownership, the right of usufruct, but it is sufficient that this right be protected by law, such as the right to life, bodily integrity and the right to personal freedom, and the harm can be divided into two types, material and moral, 1- Material (financial) harm, which affects the person in his financial liability. 2- Moral harm, which affects a person in his feeling as a result of prejudice to his affection, dignity, reputation or balcony, or in other moral matters, which a person is keen on in his life, or in other words, what affects a person in a non-financial way, as for the harm intended in the applications of the Personal Status Law, it is the serious harm that makes it impossible to continue marital life, such as assault on oneself and property, or honor or sinful assault on children, this characterization of harm falls within the scope of violence and as I have referred to when defining violence in section I of the second requirement above[43].

2- Applications of the Iraqi Judiciary

The applications of the Iraqi judiciary are represented by the rulings issued by the personal status courts and the decisions of the Court of Excellence, which are important principles, because it is issued by a judicial body in Iraq and the presentation will be in accordance with the provisions of the Personal Status Law in order to match the text and the application as follows:

1. Article 40 of the Personal Status Act No. 188 of 1959, as amended, may the wife request separation when the husband harms her, in accordance with the provisions of paragraph 1 of article 40 of the Personal Status Act No. 188 of 1959, as amended, which provides as follows (If one of the spouses harms the other spouse or their children in a way that makes it impossible to continue married life, and it is considered harmful, addiction to taking intoxicants or drugs, the case of addiction shall be proven by a report from a competent official medical committee. Gambling in the marital home is also considered harmful, in a decision of the Court of Cassation No. 775 / Personal / 1981 on 13/5/1981, which considered the harm achieved in the event of an appeal against the wife accusing her of infidelity, even if the wife waived his complaint or the investigating court, and this is considered harm and harm that cannot continue married life, the following is the text of the decision of the Court of Cassation upon scrutiny and deliberation, it was found that the distinguished judgment is incorrect and contrary to the provisions of Sharia and the law, as it is established from the investigative papers linked in the lawsuit that the distinguished (M) has filed a complaint in the Peace Police against his distinguished wife (H) accusing her of infidelity with the person (C) and the distinguished person supported this accusation before the investigating judge Al-Kadhimiya - the parties on 3-5-1979, and that this accusation of marital infidelity to the distinguished and which affects her honor and honor is considered a harm that cannot be continued with the ten between them, even if the discriminatory person has waived his complaint and the investigating judge decides to expire the criminal case, since the harm is fixed, the court had to rule to separate the spouses in accordance with paragraph 1 of Article Forty of the Personal Status Law, therefore, decided to overturn the distinguished judgment and return the case papers to its court for progress in the advanced manner, provided that the cassation fee remains dependent on the result, and the decision was issued by agreement on 9 Rajab 1401 AH corresponding to 13/5/1981.) In another decision No. 2445 / Personal / 2008 on 18/8/2008, which stated (Severe beating of the wife resulting from serious injuries is considered harm that makes it impossible to continue married life and requires separation based on the provisions of Article 40/1 of the Personal Status Law). In a decision of the Personal Status Court in Al-Shaab neighborhood, the plaintiff considered that she had been harmed and considered a form of violence when she sold her kidney in the presence of her husband, and considered that this behavior was one of the factors of pressure on the wife that required separation.
2. If the marriage is concluded outside the court by coercion Paragraph (4) of Article (40) Personal Status which provides the following (If the marriage was outside the court by coercion and consummation has been done) this article I did not find application in the judicial rulings in the Iraqi judicial system, which is a clear picture that domestic violence is characterized by secrecy and hiddenness, as it occurs daily, but no one noticed its presence in the judiciary, since the nature of Iraqi society was built on the oppression of the wife, there are many incidents of marriage of minors in the Iraqi courts, and minors divorce occurs more than others, in a study by a social researcher in the Personal Status Court in Al-Shaab neighborhood tagged (the phenomenon of minors marriage.. a field study) by social researcher Saja Abdel Redha, statistics indicated that the period of the first month of 2010 found that cases of early marriage, especially the marriage of minors, are constantly increasing from the first month until the fifth month of this year, and that the beginning of the first month has witnessed ten cases out of 46 marriages, in the second month, we noticed an increase of 47 cases of marriage of minors out of 132 cases, in March, we noticed an increase in 87 out of 281 cases, in April, it reached 100 cases out of 297 cases, ranging from early marriage to minors, in the fifth month of this year there was a continuous and very high increase as at the beginning of the month and during the first days of the month, where the number of cases reached 36 out of 50 cases during these four days, and the following is a data table that represents a remarkable high percentage.
3. The study showed that the majority of the sample members are between the ages of (1517) years, where the number of them during the five months almost 244 out of 746 marriages that took place in the Personal Status Court in Al-Shaab, this shows a continuous increase in the number of marriages of minors of the ages described above, which represent approximately 30% of the total marriage contracts.

4. If the husband abandons his wife for two years or more, this is considered a form of violence, as the Islamic Sharia considered it a kind of punishment towards the wife according to the text of the holy verse (As for those from whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them. Then if they obey you, seek not a way against them. Lo!), however, the Iraqi legislator considered a type of harm caused to the wife as a result of an act carried out by the husband of his full will and intended to achieve the result of his act of harming the wife, this is in accordance with the text of paragraph (2) of item II of Article (43) of the Personal Status Law No. 188 of 1959, as amended, which states the following (If the husband abandons his wife for a period of two years or more without a legitimate excuse, even if the husband is known for his residence and has money from which she can spend) some jurists considered abandonment in bed as a kind of psychological harm to the wife, according to the foregoing, and the applications of the Iraqi judiciary are the decision of the Personal Status Court in Kadhimiya, which ruled for separation for abandonment, even if the wife is with the husband in the same house, as abandonment is considered to be achieved if the husband deliberately abandons the wife in the marital bed.
5. Harm caused to the wife in cases where the husband is afflicted with organic and psychological diseases in accordance with paragraphs (4, 5 and 6) of item I of Article (43) of the Personal Status Law No. 188 of 1959, as amended, among the applications of the Iraqi judiciary is the decision of the Court of Cassation No. 246 / Personal / 86 87 on 24/9/86, it states (proving impotence requires referring the defendant to the medical committee to assess whether he has organic impotence or referring the defendant to the medical committee to assess whether he has organic or psychological impotence or not, if it appears that the impotence is caused by a psychological cause, the action for separation shall be postponed for a period of one year, pursuant to the provisions of Article 43/F4 of the Personal Status, by reading the above article and the applications of the judiciary towards it, we find that in the text there is an introduction to legitimize domestic violence against the wife by linking it with the man who suffers from a psychological or organic disease, it is hoped that it will disappear without specifying a specific period and that the wife will be granted an indefinite period at the expense of the wife's physical and psychological needs, which makes her suffer from types of psychological harm because she does not have the satisfaction of her need.

Conclusion

After completing the research tagged (domestic violence) as one of the reasons for separation between the text and the application, we find that the Iraqi legislator has taken into account this subject and referred to it in the text of the Personal Status Law No. 188 of 1959, as amended, when he enables the wife to request separation when the reasons for it are available, however, it is noticeable on judicial applications, we find that the Iraqi judiciary tends to restrict the application of these texts under the pretext of preserving the family, its ties and relations, and the defect in this lies in the breadth of the text and its ability to interpret more than one aspect of the load, contrary to what is stated in it, in some judicial applications, judicial rulings have been able to estimate the size of the dispute that generates harm to the wife, it is not subject to the control of the Court of Cassation in this regard, and no one may dissuade the court from its point of view, even if the wife strives to prove the harm that makes it impossible to continue married life, because the applications of the Court of Cassation indicate that the existence of the dispute that causes damage or not is left to the discretion of the Court of First Instance, in addition, some texts legalized domestic violence when they gave the husband the opportunity to stay with his wife despite the disruption of his sexual functions or despite his mental illness according to what is stated in the text of paragraphs (4, 5, 6) of the first item of the text of Article (43) of the Personal Status Law in force No. 188 of 1959, as amended, so I found it necessary to include some of the following recommendations:

1. Reformulate legal texts to guarantee the wife the right to request separation when a case of domestic violence in any form is realized, by writing the legal texts in a clear, specific and clear language and not leaving the matter to the broad authority of the court.
2. Include domestic violence among the criminal offenses and impose a penalty on the perpetrator by any party, whether father, mother, brother, sister and others.
3. Conducting seminars and holding intensive conferences on domestic violence, analyzing it as a phenomenon, diagnosing its causes and indicating mechanisms for addressing it.
4. Work to encourage legal studies and research related to domestic violence.

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