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Islamic Marriage and Divorce Laws
of the Arab World

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Islamic Marriage and Divorce Laws of the Arab World

by

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CHAPTER 4

IRAQ

Until the end of the Ottoman period all areas of Iraqi law were governed by the Shari'a, without distinction between civil and personal status law. In 1917, with the reorganisation of the courts, the Shari'a courts became responsible solely for the personal status affairs of the adherents of the Sunni schools. In 1918 the Regulation of the Shari'a Courts was issued, in which a "Majlis Tamyiz Shara'i" (Shari'a Review Board) was established to review rulings issued by the Sunni Shari'a Courts. Personal status issues for the Ja'fari school were governed by the civil courts.

In 1922 the government resolved that the Interim Law of Shari'a Procedure issued by the Ottoman government should be applied. The Law of the Shari'a Courts was then issued in 1923, within which Shari'a Courts for the Ja'fari school were formed and a Ja'fari Shari'a Review Board was established. These bodies supported the Basic Law issued in 1925.

The source of Shari'a rulings at this time was the juristic writings of prominent jurists. There had been some movement towards codification, and in 1945 a committee of four was formed to draft a codified law which would comprise joint provisions for the Sunna and the Shi'a, and separate provisions in areas where the schools branch away from each other.¹ The draft was presented to

¹ The main difference between the Sunna and Shi'a is essentially political. The argument of the Shi'a has always been that the Imamate should follow the House of the Prophet. They agree upon the first three Imams, Ali ibn Abi Talib, al-Hassan and al-Hussayn, but differ thereafter. After the killing of al-Hussayn some of his followers turned their allegiance to his half-brother, Muhammad ibn Ali, known as Ibn al-Hanifa. They formed a group known as al-Kisaniyya. The majority of the Shi'a, however, supported the Imamate of the descendants of Fatima, according to which principle the fourth Imam should have been Zayn al-Abidin ibn al-Hussayn. After this they again differed. One faction supported the Imamate of Imam Zayd ibn Ali ibn al-Hussayn ibn Ali, the founder of the Zaydi school which is considered the nearest of the Shi'a schools to the Sunna. This, however, was rejected by some who supported Abu Ja'far Muhammad al-Baqir ibn Ali Zayn al-Abidin and after him his son Ja'far al-Sadiq. The latter group then divided again into the Ithna Ashariyya and the Ismailiyya. The Ithna Ashariyya (sometimes translated as the "twelver" Shi'a) are otherwise known as the Imami Shi'a or Ja'fariyya. The Ja'fariyya consider that all the needs of the Muslim community for the Day of Judgement are contained within the Qur'an but that the majority of the community cannot understand its meanings, which can only be given by the Imam. The four main books of jurisprudence of the Ja'fariyya are al-Kafi, Man la Yahdhiruhu al-Faqih, al-Istibsar and al-Tahdhib. These are considered to be the basis of the Ja'fari school. It may be noted that Ja'fari *fiqh* is closest to the Shafi'i school in

In all other cases the judge shall be required to determine the period after which a decree shall be given that the missing person is dead. This shall be after inquiries have been made by all possible means in order to obtain information as to whether the missing person is alive or dead.

Article 22

After a decree has been given that a missing person is dead in the manner indicated in the preceding article his wife shall observe the waiting period following death and his estate shall be divided between his heirs existing at the time of the decree.

Article 23 bis

The divorcing husband shall be sentenced to a period of imprisonment not exceeding six months and a fine not exceeding two hundred pounds or by one of these penalties if he contravenes any of the provisions stipulated in Article 5 bis of this Law.

Parliament, which rejected it, and it was shelved until 1959 when the Ministry of Justice formed another committee to review and reformulate the draft. In formulating the Law, the committee referred to rulings of the jurists which had become established as precedent amongst judges and lawyers, and to certain principles derived from the Islamic schools of jurisprudence, without restriction to a specific school. The committee also referred to the Syrian Law No. 59 of 1953 and to the Egyptian Law No. 25 of 1929 comprising provisions in the area of maintenance and certain other areas of personal status.

Law No. 188 was issued in 1959 and has been amended in certain areas by subsequent laws, the most important of which are Law No. 11 of 1963 and Law No. 21 of 1978.

Law No. 188 of 1959: The Law of Personal Status

In the Name of the People

The Supreme Council

In cognisance of the provisional constitution and on the basis of the proposal of the Minister of Justice and the agreement thereto of the Council of Ministers
Has ratified the following law:

General Provisions

Article 1

1. The legislative texts of this law shall apply to all the issues which these texts encompass literally or implicitly.
2. If no legislative text is to be found which may be applied, judgment shall be given on the basis of the principles of the Islamic Shari'a which are most in keeping with the texts of this law.
3. In all matters the Courts shall look for guidance to the principles established by the judiciary and by Islamic jurisprudence within Iraq and in other Islamic countries the laws of which are similar to those of Iraq.

Article 2

1. The provisions of this law shall apply to all Iraqis other than those excepted by a specific law.

cont.

the branches of jurisprudence. The Ja'fari Shi'a are the official school in Iran, comprising 35 million people, there are another 35 million in India and Pakistan, and in Iraq, where it is the official school amongst the Shi'a population, there are 6 million. The Ja'fari population in Lebanon is 1 million.

2. The provisions of Articles 19, 20, 21, 22, 23, and 24 of the Civil Code shall apply in the cases of conflict of laws with regard to place.²

² The articles of the Civil Code referred to are as follows.

Article 19

- (1) With respect to the objective conditions for the validity of the marriage, reference shall be made to the law of [the country of] both spouses. With regard to form, any marriage between foreigners or between a foreigner and an Iraqi will be deemed valid if it is contracted in accordance with the form established in the law of the country in which the marriage takes place, or if the forms established in the laws of the countries of both spouses are observed.
- (2) The law of the state to which the husband belongs at the time the marriage is contracted shall apply with regard to the consequences of the marriage contract, including the financial consequences.
- (3) With regard to divorce, annulment and separation, the law of the [country of the] husband at the time of the divorce or the filing of the claim shall apply.
- (4) Matters of lawful paternity, guardianship and all other duties between parents and children shall be governed by the law of the [country of the] father.
- (5) In matters stipulated in this article, if one of the spouses is Iraqi at the time of the contracting of the marriage, Iraqi law only shall apply.

Article 20

In matters relating to wills, marital authority and other subjective systems for the protection of persons with limited or no legal capacity or absent persons, the law of the state to which they belong shall apply.

Article 21

With regard to the obligation of maintenance, the law [of the country of] the woman to whom the maintenance is owed shall apply.

Article 22

Matters relating to inheritance shall be governed by the law of [the country of] the deceased at the time of his death, taking into account the following:

- (a) Difference in nationality shall not prevent inheritance with regard to movable and immovable property, except that foreign nationals may only inherit from an Iraqi citizen where the law of their country allows an Iraqi citizen to inherit from them.
- (b) The property in Iraq of a foreign national who has no heir shall revert to the Iraqi State even where the law of his country specifies otherwise.

Article 23

- (1) Cases involving wills shall be governed by the law of [the country of] the person making the bequest at the time of his death.
- (2) Iraqi law shall apply with regard to the validity of wills relating to nonmovable property which is located within the State of Iraq and which belongs to a foreign national, and with regard to the means by which it may transferred.

Article 24

In matters relating to ownership, possession and other material rights, and in particular the ways in which these rights may be transferred by contract, inheritance, bequest or other means, the law of the country in which an immovable property is situated shall apply with regard to such property, while with regard to movable property the law of the country in which the property is located at the time of the event as a consequence of which the right is gained or lost shall be applicable.

Chapter One: Marriage

Part One: Marriage and Betrothal

Article 3

1. Marriage is a contract between a man and a woman who is lawfully permitted to him, the object of which is to establish a bond for a shared life and for procreation.
2. If a marriage is concluded its legal effects shall be binding on the two parties from the time of its conclusion.
3. The promise of marriage and the recitation of the *Fatiha* and betrothal shall not be considered to be a marriage.
4. Marriage to more than one woman shall not be permitted except with the permission of a judge. This permission to be given the following two conditions must be met:
 - (a) The husband must have the financial ability to support more than one wife.
 - (b) There must be no harm to the innocent.
5. If a lack of equality between wives is feared, polygamy shall not be permitted; the question of equality shall be left to the judge.
6. Any man who enters into a marriage contract with more than one woman in breach of the provisions of articles 4 and 5 shall be punished by a prison sentence which shall not exceed one year or by a fine not exceeding one hundred dinars.

Part Two: Legal Conditions of the Contract

Article 4

Marriage shall be concluded by a declaration which indicates marriage literally or customarily by one of the parties or by acceptance by the other; proxies may represent the parties.

Article 5

Legal capacity for the conclusion of marriage shall be attained by the fulfilment of the legal conditions which shall be the same for the two parties or whoever acts for them.

Article 6

1. The contract of marriage shall not be concluded if any of the conditions of conclusion or of validity of marriage is not met:

- a. That the offer and acceptance be at a single session.
 - b. That each of the contracting parties hear the words of the other and understand that the meaning of them is the contract of marriage.
 - c. That acceptance be in agreement with the offer.
 - d. That the contract be witnessed by two witnesses who possess the legal capacity for the contract of marriage.
 - e. That the contract should not be dependent upon any condition or event which has not taken place.
2. The contract may be concluded in writing by an absent person to the woman whom he wishes to marry on condition that she read the letter or that it be read to the two witnesses and that they hear its expressions and witness that she accepts marriage to him.
 3. Lawful conditions stipulated within the marriage contract shall be recognised and must be fulfilled.
 4. The wife shall be entitled to request that the contract be dissolved if the husband does not fulfil the conditions which she stipulates in the marriage contract.

Part Three: Legal Capacity

Article 7

1. For a person to have the legal capacity to marry he must be of sound mind and must have attained eighteen years of age.
2. A judge may give permission for the marriage of one of the spouses who is mentally ill if it is established by a medical report that the marriage will not be damaging to society and that it is in his personal interest, provided the other spouse agrees to the marriage explicitly.

Article 8

If a person who has attained fifteen years of age applies to be married the judge may permit this if his/her fitness and physical capacity are proved and upon the agreement of his/her legal guardian. If the guardian refuses the judge shall ask him to agree within a period which he shall stipulate and if he does not object or if his objection is not worthy of consideration the judge shall permit the marriage.

Article 9

1. No relative or third party may compel any person, male or female, to marry without his or her consent. A contract of marriage concluded by coercion shall be deemed void if consummation does not take place. Likewise no relative or third party may prevent a person who has the legal capacity to marry in accordance the provisions of this law from being married.

2. Any person who contravenes the provisions of paragraph 1 of this Article shall be punished by detention for a period not exceeding three years and by a fine, or by one of these penalties, if he is a relative in the first degree. If, however, the person contravening this is not such a relative the penalty shall be imprisonment for a period not exceeding ten years, or detention for a period not exceeding three years.
3. The Shari'a Court or the Personal Status Court shall be required to notify the investigating authorities for the legal investigative procedures to be taken with regard to any person contravening the provisions of paragraph 1 of this Article. They may detain him to guarantee his appearance before the said authorities. Any person who is subject to coercion or prevention may approach the investigating authorities directly in this regard.

Part Four: Registration and Registration of the Contract of Marriage

Article 10

The contract of marriage shall be registered at the appropriate court without fees in a special register under the following conditions:

1. A statement shall be drawn up with a stamp specifying the identities of the contracting parties, the date and place of the marriage, the amount of the dower, and that there is no lawful impediment to the marriage. This statement shall be signed by the contracting parties and by the mayor of the quarter or village or two of the latter.
2. The statement shall be accompanied by a medical report which confirms that the spouses are free from any physical and medical impediments and by the other documents required.
3. The contents of the statement shall be entered in the register and shall be signed by the contracting parties and by the mayor or the witnesses or their signatures or their thumb prints in the presence of the mayor or the witnesses. It shall be given to the spouses as a document.
4. The contents of the statement registered may be relied upon on the basis of the evidence of the spouses. They shall be subject to

³ The Ministry of Health has issued the following instructions referred to as follows:

On the basis of the request of the Ministry of Health, No. 443, dated 25/2/1960, and of the Ministry of Justice (Department of Legal Codification) in its letter No. 54/10, dated 1/3/1960, the following instructions:

- (1) The medical report shall be drawn up in accordance with paragraph 2 of Article 10 of Personal Status Law No. 188 of 1959 and shall include the following:
 - a. Physical - including contagious diseases. i. Contagious venereal diseases.
 - ii. Leprosy in its active stage.
 - b. Mental - including mental retardation and handicap.

implementation insofar as the dower is concerned, provided no objection to them is made before the court.

5. Any man who contracts a marriage outside the court shall be punished by imprisonment for a period of not less than six months and not exceeding one year, or by a fine of not less than three hundred dinars and not more than one thousand dinars. The penalty shall be imprisonment for a period of not less than three years and not exceeding five years if he contracts a further marriage outside the court whilst already married.

Article 11

1. If a man affirms to a woman that she is his wife and there is no lawful or legal impediment to this and if she confirms this then her marriage to him shall be proved by his affirmation.
2. If a woman affirms that she has married a man and he confirms this during her lifetime and there is no legal or lawful impediment the marriage between them shall be proved. If he confirms it after her death the marriage shall not be proved.

Chapter Two

Part One: Women Prohibited in Marriage and Marriage to Kitabiyyat⁴

Article 12

It is essential for the validity of the marriage that the woman should not be lawfully prohibited to the man who wishes to marry her.

Article 13

The causes of prohibition fall into two categories – permanent and temporary. The permanent factors are blood relationship, affinity and relationship by suckling. Temporary factors are marriage to more than four women at the same time, that the woman does not belong to one of the accepted religions, that the husband has previously divorced her three times in succession, the existence of the right of another man with regard to the woman in the form of marriage or the waiting period, or marriage to two women at the same time where they are

⁴ *Kitabiyyat* – women of the “people of the book”, i.e. Christians and Jews.

within the degree of relationship to each other whereby if one were male the other would be forbidden to her in marriage.⁵

Article 14

1. It is forbidden for a man to marry amongst his blood relations his mother, his grandmothers to whatever generation they ascend, his daughter and the daughters of his sons or of his daughters to whatever generation they descend, his sister and the daughters of his sisters or of his brothers to whatever generation they descend, his paternal aunt and the paternal aunts of those in his line of ascent, and his maternal aunt and the maternal aunts of those in his line of ascent.
2. It is forbidden for a woman to marry men in corresponding relationships to the above.

Article 15

It is forbidden for a man to marry the daughter of his wife with whom he has consummated marriage, the mother of his wife with whom he has merely contracted marriage,⁶ and the wives of those in his lines of ascent or descent to the furthest generation.

Article 16

Prohibition shall be caused by suckling in all the degrees of relationship by suckling which are equivalent to the degrees of blood relationship or affinity which cause prohibition except for those excluded by law.

Article 17

It shall be valid for a Muslim man to marry a *kitabiyya*. It shall not be valid for a Muslim woman to marry a non-Muslim man.

Article 18

If one of the spouses embraces Islam before the other the provisions of the Shari'a shall determine whether the marriage is to continue or the spouses are to be separated.

⁵ This article was amended by Law No. 11 of 1963 by the deletion of the phrase "marriage to more than one woman without the permission of a judge" from the factors temporarily prohibiting marriage.

⁶ i.e. even if not consummated.

Chapter Three: Matrimonial Rights and the Provisions with regard thereto

Part One: The Dower

Article 19

1. The wife shall be entitled to the specified dower on the conclusion of the contract. If it is not specified or is denied outright she shall be entitled to the proper dower.
2. If the betrothed man gives to the betrothed woman money on account of the dower before the contract and one of the parties then withdraws from making the contract or dies then that which was given, or replacement for it if it has been consumed, may be reclaimed.
3. Any gifts given shall be subject to the provisions regarding gifts.

Article 20

1. The dower may be paid immediately or deferred in full or in part. Where nothing is stipulated in this matter custom shall be followed.
2. The period of deferment specified in the contract shall be cancelled if the dower becomes payable on the grounds of divorce or death.

Article 21

The wife shall be entitled to the specified dower in full upon consummation or on the death of one of the spouses and she shall be entitled to half of the specified dower upon divorce before consummation.

Article 22

If separation occurs after consummation in an invalid contract then the specified dower or the proper dower, whichever is the lesser, shall be payable in the case where the dower was specified. If it was not specified then the proper dower shall be payable.

Part Two: Maintenance for the Wife

Article 23

Maintenance for the wife shall be incumbent upon the husband from the time of the valid contract even if she is living in the house of her family, unless the husband asks her to move to his house and she refuses without justification.

2. Her refusal shall be deemed justified so long as the husband has not paid the immediate portion of her dower or has not provided her with maintenance.

Article 24

1. Maintenance for a wife who is not disobedient shall be deemed to be a debt owed by her husband from the time he ceases to provide maintenance.
2. Maintenance shall comprise food, clothing, accommodation and related necessary costs, and medical costs all in appropriate measure, also service for a wife where it is appropriate for a woman of her status to have domestic help.

Article 25

Maintenance shall not be payable to a wife in the following circumstances:

1. If she leaves her husband's house without his permission and without lawful cause.
2. If she is imprisoned for a crime or for debt.
3. If she refuses to travel with her husband without lawful excuse.

Article 26

The husband shall not be entitled to accommodate a co-wife with his wife in a single dwelling without her consent, nor may he house one of his relatives with her without her consent except his minor child who is not of the age of discernment.

Article 27

Maintenance for the wife which is payable by her husband shall be assessed in accordance with the circumstances of both spouses in terms of wealth or hardship.

Article 28

1. Maintenance may be increased or decreased if the financial circumstances of the spouses or the local cost of living change.
2. Claims for the increase or decrease of the maintenance may be accepted in the case of unforeseen circumstances which necessitate change.

Article 29

If the husband leaves his wife without maintenance and conceals his whereabouts, stays away or is missing the judge shall award maintenance from the date the claim is instigated after evidence of the marriage is produced and the wife has been made to swear that the husband has not left her any maintenance and that she is neither disobedient nor divorced and has completed her waiting

period. The judge shall permit her to incur debt in the name of the husband in case of necessity.

Article 30

If the wife is suffering hardship and has been given permission to incur debt in accordance with the preceding paragraph, if there is a person who would be obliged to support her (if she were unmarried) he shall be obliged to lend to her if requested to do so and if he is able to, and he shall have the right of recourse against the husband only. If she borrows from a stranger then the creditor shall have the option of claiming from the wife or from the husband. If there is no one who can lend to her and if she is unable to work the State shall be obliged to support her.

Article 31

1. The judge may during the examination of a claim for maintenance award interim maintenance to the wife against her husband and this decision shall be enforceable.
2. The decision referred to shall be subject to the result of the main judgment as to whether the interim maintenance shall be deducted from the maintenance awarded or returned.

Article 32

An amount of maintenance which remains unpaid shall not be forfeit upon divorce or the death of one of the parties.

Article 33

The wife shall not be required to show obedience to her husband in anything which is contrary to the provisions of the Shari'a and the judge may award maintenance to her [in this case].

Chapter Four: The Dissolution of the Contract of Marriage

Part One: *Talaq* Divorce at the Instigation of the Husband

Article 34

Talaq is the lifting of the bond of marriage at the instigation of the husband or his proxy or by the wife if she is given a proxy to do so or is given the authority to do so, or by the judge. *Talaq* shall only take place if effected in accordance with the provisions of the law.

Article 35

Talaq by the persons described below shall not be effective:

1. A man who is intoxicated, insane, feeble-minded⁷ or under coercion or who has lost his discernment due to anger, sudden disaster, senility or illness.
2. A man who is in death sickness⁸ or in a condition which will most probably be fatal in the case where if he dies of this illness or condition his wife will inherit from him.

Article 36

Talaq which is not immediate or which is conditional or which uses the form of an oath shall not be effective.

Article 37

1. The husband shall have the right to three *talaqs* with regard to his wife.
2. *Talaq* to which a number is attached verbally or by gesture shall only be effective as a single divorce.
3. A woman divorced by her husband by three separate *talaqs* shall be irrevocably divorced from her husband.

Article 38

There are two categories of *talaq*:

1. Revocable *talaq*: that is, that in which the husband may take back his wife during her waiting period without a contract. The revocation shall be confirmed in the same manner as the *talaq*.
2. Irrevocable *talaq* – of which there are two categories:
 - a. the lesser irrevocable *talaq* – that is, that in which the husband is permitted to marry his divorced wife with a new contract.
 - b. the greater irrevocable *talaq* – that is, that in which it is forbidden for the husband to marry his divorced wife whom he has divorced by three separate *talaqs* and whose waiting period is completed.

Article 39

1. A person who wishes to divorce [by *talaq*] shall bring a claim before the Shari'a Court requesting this in order to obtain a judgment to this effect. If it

⁷ Islamic law recognises certain states of interdiction other than insanity, being: *ma'tuh* – feeble minded, *safah* – spendthrift/irresponsible/incompetent, *dhu al-ghafla* – easily led.

⁸ Death sickness is the period immediately preceding death during which a person is suffering from an illness which is intrinsically likely to prove fatal.

- is impossible for him to make an application to the court he must register the *talaq* with the court within the waiting period.
2. The marriage document shall remain valid until it is cancelled by the court.

Part Two: Judicial Divorce⁹

Article 40

Either spouse may request divorce upon the following grounds:

1. If one of the spouses causes harm to the other in such a way that the continuation of the marriage is impossible.
2. In the case of marital infidelity by the other spouse.
3. If the marriage contract was concluded before one of the spouses attained eighteen years of age, without the consent of a judge.
4. If the marriage was concluded outside the court by means of coercion and has been consummated.
5. If the husband takes a second wife without the permission of the court. In this case the wife shall not be entitled to instigate a criminal claim on the basis of paragraph 1 of section A of Article 3 of the Principles of Criminal Prosecution, No. 23 of 1971, on the grounds of paragraph 6 of Article 3 of this Law.

Article 41

1. Either spouse may request divorce in the case of discord between them, whether before or after consummation.
2. The court must investigate the causes of the dispute, and if it finds that discord exists it shall appoint one arbitrator from the family of the wife and one from the family of the husband, if such persons are to be found, to attempt reconciliation of the dispute. If it is not possible to find such persons, the court shall ask the spouses to nominate two arbitrators, and if they do not agree these shall be appointed by the court.
3. The arbitrators shall be required to make efforts to bring about a reconciliation and if they find this impossible they shall bring the matter before the judge, making it clear to him which of the parties they believe is at fault. If they are of different opinions the judge shall appoint a third arbitrator.
4. a. If it is apparent to the court that the discord between the spouses is perpetual and it is unable to reconcile them, and if the husband refuses to pronounce *talaq*, the court shall grant a judicial divorce.
b. If judicial divorce takes place after consummation, the deferred dower

⁹ Parts Two, Three and Four were amended by Law No. 21 of 1978.

shall be forfeit if the fault is on the part of the wife, whether she is the claimant or respondent. If she has already received the whole of the dower she shall be obliged to return not more than half of it. If it is established that there is fault on both parts the deferred part of the dower shall be divided between them in proportion to the fault attributed to each of them.

- c. If judicial divorce takes place before consummation and it is established that the fault is on the part of the wife she shall be required to return any of the immediate portion of the dower which she has received.

Article 42

If the claim for judicial divorce on one of the grounds referred to in Article 40 of this law is rejected on the grounds that it is not proven, and if the decision to reject it becomes absolute, and if the claim for judicial divorce is repeated on the same grounds, the court must refer it to arbitration in accordance with the content of Article 41.

Article 43

Firstly – The wife shall be entitled to request judicial divorce upon fulfilment of one of the following conditions:

1. If the husband is sentenced to a custodial sentence of three years or more, even if he has money from which she can support herself.
2. If the husband leaves his wife for a period of two years or more without lawful justification, even if his place of residence is known and he has money from which she can support herself.
3. If the husband does not ask his wife with whom he has not consummated marriage to celebrate the wedding within two years of the date of the contract. The husband's request to his wife to celebrate the wedding shall not be counted if he has not fulfilled her matrimonial rights.
4. If she finds her husband to be impotent or afflicted in a manner whereby he is not able to fulfil the matrimonial duties, whether this is due to physical or psychological causes, or if he is so afflicted after consummation and it is established by a report by a recognised specialist medical committee that he cannot be cured of this. If, however, the court finds that the cause of this is psychological, the judicial divorce shall be deferred for a period of one year with the condition that the wife make herself available to her husband during this period.
5. If the husband is infertile, or if he becomes infertile after marriage and she has no living son by him.
6. If after the contract she finds that her husband is afflicted by some condition due to which she cannot live with him without suffering harm, such as the two forms of leprosy, tuberculosis, syphilis or insanity, or if he becomes afflicted

thereafter by one of these conditions or the like. If, however, the court finds in the light of a medical examination that there is hope that the condition will be cured, it shall defer the judicial divorce until the condition is cured. The wife shall be entitled to refuse the company of the husband for the duration of the deferment. If the court finds that there is no hope that the condition will be cured within a reasonable period, and if the husband refuses to pronounce divorce, and if the wife is insistent upon her request, the court shall order a divorce.

7. If the husband refuses to provide her with maintenance without lawful justification, after he has been granted a period of grace not exceeding sixty days.
8. If it is not possible to obtain maintenance from the husband due to his being absent, his disappearance, concealing his whereabouts or sentenced to imprisonment for a period of more than a year.
9. If the husband refuses to pay the arrears of maintenance awarded after he has been granted a period of grace by the enforcing authority not exceeding sixty days.

Secondly – The wife shall be entitled to request judicial separation before consummation, and in this case the court must rule for divorce after the wife has returned to the husband any dower which she has received and any money and proven expenditure which he has spent for the purpose of the marriage.

Article 44

The grounds for judicial divorce may be established by all methods of proof, including verbal testimony if available, and shall be assessed by the court, with the exception of cases where the law stipulates specific means of proof.

Article 45

Judicial divorce in the cases referred to in Articles 40, 41, 42 and 43 shall be deemed lesser irrevocable divorce.

Part Five: Separation by Choice (*Khul'*)

Article 46

1. *Khul'* is the termination of the bond of marriage by the expression of *khul'* or other words which have this meaning and shall be concluded by offer and acceptance before the judge, observing the provisions of Article 39 of this law. It is a condition for the validity of the *khul'* that the husband should have the legal capacity to divorce and that the wife should be the proper subject for divorce. *Khul'* shall take effect as an irrevocable divorce.

3. The husband may divorce his wife by *khul'* in return for a consideration which may be more or less than her dower.

Chapter Five: The Waiting Period

Article 47

The waiting period shall be obligatory for a wife in the two following cases:

1. If separation occurs between herself and her husband after consummation, whether by revocable *talaq* or by the lesser or greater irrevocable *talaq*, by judicial divorce, by agreement, annulment or the "option of maturity".¹⁰
2. If her husband dies even if this is before consummation.

Article 48

1. The waiting period of *talaq* or judicial divorce for a woman with whom marriage has been consummated shall be three menstrual cycles.
2. If the woman is mature but has no menstruation her waiting period in case of *talaq* or judicial divorce shall be three complete months.
3. The waiting period for a widow shall be four months and ten days for a woman who is not pregnant. For a pregnant woman it shall be until she gives birth or the aforesaid period, whichever is the longer.
4. If the husband of a divorced woman dies during the waiting period she shall observe the waiting period in respect of death and the period which has elapsed shall not be counted.

Article 49

The waiting period shall commence immediately after *talaq*, judicial divorce or death even if the woman is not aware of the divorce or death.

Article 50

Maintenance for the divorced wife for the waiting period shall be incumbent upon a living husband, even if she is disobedient. There shall be no maintenance for the waiting period in respect of death.

¹⁰ By which a person given in marriage whilst a minor may chose to terminate the marriage upon attaining majority.

