



## **SEPARATION BETWEEN SPOUSES, DUE TO DEFECTS A COMPARATIVE STUDY BETWEEN JURISPRUDENCE AND THE LAW OF IRAQ AND THE ARAB COUNTRIES**

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<b>Received:</b> December 10 <sup>th</sup> 2021 <b>Accepted:</b> January 10 <sup>th</sup> 2022 <b>Published:</b> February 18 <sup>th</sup> 2022	<p>In this research, we dealt with the issue of differentiation of defects between spouses and the details and merits it included, and it became clear to us that jurisprudence and laws, especially the Arabic ones, are in agreement, even if in a general way, on the right of the spouses to request a differentiation because of faults and defects. Some laws consider the defect a reason for the termination of the contract from its foundation, as did some jurisprudential opinions. Legislation also relied on medical reports and expert opinion in defining the ailments and defects and their duration, and the laws gave sufficient respite for the defects that are subject to demise, in an attempt to restore the opportunity to build the family entity that is threatened with demise.</p> <p>And in another reference within the research, most of the legislations did not specify specific reasons to make them stable, so they gave the reasons, for example, to make the law more flexible in dealing with bugs and defects, and it also gave the judge the authority to rely on medical reports and experts to decide on those newly developed ailments.</p> <p>We have devoted the first topic in this research with two demands to define the differentiation of defects linguistically and idiomatically, and we dealt with in the second section the annulment of the marriage contract for the defect in the perspective of Muslim jurists with three demands that dealt with the subject in detail. Iraqi law and the laws of Arab countries.</p>

**Keywords:** Spouses, Laws, Muslim jurists, Muslim jurists

### **INTRODUCTION:-**

Every society has a social system that governs it and organizes the social bonds in it, and since most societies are based on the marital bond, this sacred bond has been given the necessary attention from its preliminaries, passing through all its merits and symptoms. It is easy to neglect that sacred bond, and the need for it to be built on the bonds of love and affection so that its tree can bear fruit and give its fruits to society, a new addition capable of reconstructing life, after giving it doses of sober education and the necessary attention and correct and committed education.

However, beams may occur in this building that make it lose the purpose of its construction. These beams have no part in this contract. Rather, they are external beams that call for review and evaluation and an attempt to remove them by cooperation between the spouses, and these symptoms rise to be defects that

prevent the establishment of the family and destroy the goal that it is based on it, and those defects may be subject to demise, so the injured party must wait and not go to the option of annulment and separation, and be patient and wait until they disappear because the partner did not intend that harm and does not want to harm himself and others for sure, and these symptoms may be permanent and there is no hope of their demise, and here it does not make sense to link the partner's life to this cause whose demise is not hoped for, and with its existence all the meaning and beautiful goal of marriage ends.

The various legislations have given the attention that this subject deserves. In this research, we review the views of Islamic jurisprudence with all its doctrines and orientations, reviewing the detailed views of the defects and the reasons that necessitate dissolution and separation, as well as reviewing the views of Iraqi



law and Arab laws and the details, provisions and sources of their legislation included in the articles. The jurists of Sharia and law have singled out the essence of their thought and the product of their efforts, in research and detail to find out all aspects of the subject, explaining its rulings, explaining its purposes, and clarifying its effects. Life has changes that are directly reflected in him, especially since the defects are mostly related to the physical condition of the human being, which is affected by the changes in life. Which affected the resolution of such matters by scientific and considered methods, leaving no room for doubt, multiplicity of opinions and controversy, and giving the judiciary confidence in making the right decision and closest to reality and truth. For all of this, we have devoted our research to shedding light on the issue of differentiating between spouses for the defects of a comparative study between jurisprudence and Iraqi law and Arab laws. We ask God to help us in our endeavour.

### **Section one: Defining the differentiation due to defects, linguistically and idiomatically**

No two disagree that the defects that befall one of the spouses negatively affect the marital life, and may destroy the affection between the spouses, and they undoubtedly affect the purposes of marriage, and the expectation of the continuation of the marital bond with the presence of the defect that prevents each of them from enjoying the other is something unimaginable, without Exhaustion for one of them at the expense of his rights that the Shariah allowed him, the Sharia and after that the law has developed a solution for this and did not leave the matter without effective treatments, there must be a way to salvation, and because the husband is the one who has the right to divorce, the judge is the one who has the right to separate and he is the one who removes injustice from The wife in such cases.

#### **First**

#### **Differentiation due to defects, in language**

##### The defect, in language:

The eye, the ya and the ba are a sound origin, in which there are two words, one of them: the fault, and the other is the fault, and they are far apart, so the fault in the thing is known. The other, the fault, the fault of the clothes, etc., and it is correct Arabic. Fault and defect: stigma.)<sup>1</sup>(

And also, it means a defect that opens the eye and the silence of the z and the plural of defect is defects and it is a deficiency, and it is said that the thing is

defective and defective, i.e. it has a defect, and the defect is the stigma.)<sup>2</sup>(

##### Differentiation, in language:

Taken from the difference, which is the opposite of the plural.)<sup>3</sup>(

It is said: the difference between the two things. Firqa, Firqan: it means separating and distinguishing one from the other (4) and severing and severing: (the source of separation) (5), it is the name of the one who separated by separation and separation (6) and the separation of something is separation and separation: its clear, and so-and-so separated his wife, separation and separation: between her. (7) And the Criterion: the Qur'an, and everything that differentiates between truth and falsehood is a criterion." The Almighty said: (And We gave Moses and Aaron the Criterion).)<sup>8</sup>(

From the foregoing, the differentiation means the separation and the separation, which is the opposite of plural and meeting.

#### **Second**

#### **Separation due to defects, in terminology**

The commentators cited many definitions of ills that are similar in meaning and content, even if they differ in the use of words. The Imamiyyah defined it as (the defects that require the wife or husband to force the annulment of marriage) (9) and some of the Hanafi school defined it as (the illness that leads to the termination of the marital relationship between a man and a woman). By the appearance of a mental or physical deficiency in one of them) (10), and some Shafi'is defined it as "what violates the purpose of the original marriage" (11) or (it is everything that repels intercourse and breaks lust and longing) (12), and some Hanbalis defined it (as a physical deficiency or My mentality in one of the spouses prevents him from achieving the purposes of marriage and enjoying married life (13.)

It focused on the person's mental or physical inability to perform his marital duties, which causes harm or hardship that is reflected in the failure to achieve the purposes and benefits of marriage for the other party (14). It is a mental or physical atrophy in one of the parties to the contract that leads to the termination of the marital relationship between the man and the woman and prevents the achievement of the purposes of marriage (15) . We believe that the most correct definition of the defect is a physical or mental deficiency in one of the spouses that makes him unable to fulfill his marital duties, which affects the



realization of the purposes of marriage for the other spouse.

The Iraqi law and the Arab laws did not mention a definition of the meaning of differentiation for defects, but apparently they were satisfied with the verbal significance of the meaning of (differentiation) and the meaning of (flaw), so the articles of the laws came to talk about the details of the reasons for differentiation of defects without referring to its definition.

### **Second section**

#### **Annulment of the marriage contract due to a defect in the perspective of Muslim jurists**

In this section, we will discuss everything related to the opinions of Muslim jurists of their various sects on the issue of differentiation of defects and in three demands:

#### **First**

#### **Annulment of the marriage contract due to defects in the Jaafari jurisprudence**

Our research in this requirement revolves around the defects that give one of the spouses the right to annul the marriage contract; The discussion falls under the categories of these defects, which are divided into three categories:

#### **The first: the man's faults:**

According to the views of the Imami jurists, the faults of a man are four: insanity, castration, stubbornness and cowardice; As for the defects of a woman, they are seven: insanity, leprosy, leprosy, horniness, infertility, blindness, and crippling; And the darn is most likely proven defective because it prevents intercourse.

It is also not rejected, and the contract is not annulled by fault, or by adultery, even if it is limited, nor by lameness in most cases.

We will discuss in detail the man's faults in marriage, which give the wife the right to annul his marriage, four:

The first: absolute insanity.)16(

And the second: And castration by breaking the kha with the tide, which is: amputating the two: females and taking them out, and if intercourse is possible, according to the most popular among the companions .)17(

And the third: Insanity, which is as defined by the companions as it was narrated: a disease that prevents penetration; Because the male is weak from spreading.(18) And in the Sahih: about a woman whose husband was afflicted, and he was unable to have intercourse, should she leave him? He said: "Yes, if you wish.)19("

And the fourth: the jab, which is to cut off the penis in whole or in part, and it does not remain with him as

much as the glans, and if it remains, there is no choice, unanimously )20(.

#### **The second: disadvantages of women:**

The faults of a woman are seven: insanity, leprosy, leprosy, horniness, infertility, blindness, and crippling; And the darn is most likely proven to be a defect because it prevents intercourse, and we will come to clarify these defects and divide them into two parts: consensual defects, i.e. agreed upon, and contentious defects.

#### **First: consensual defects:**

1-Insanity: It is the corruption of a stable mind that is not based on fleeting forgetfulness or occasional fainting with the predominance of bitterness. For the lack of sincerity of the launch with the reliance on one of the two things by convention.

2-Leprosy: with the addition of the gym, which is: a disease with which the parts become withered and the flesh is scattered, provided that its appearance on the body is verified, or the testimony of two just people, or that they certify it)21(.

3-And leprosy, which is: the whiteness or blackness that appears on the surface of the body due to the predominance of phlegm or blackness, and it is considered from the verified without the suspected of vitiligo (Vitiligo: whiteness in the skin that contradicts its color, not from leprosy (22)).

4-Al-Qarn and Al-Afla: And the horn with the silence of the ra and its opening, it was said: It is a bone like a tooth in the vulva that prevents intercourse, and if it is meat, then it is the alfel(23) by stirring and in their union or difference between them is a dispute between linguists and jurists, and most of the two groups are on the union, and it is narrated in the two reports: one of them is the correct one. "A woman responds to four things: from leprosy, leprosy, insanity, and the horn, which is the bug, so long as it does not happen, and if it falls on her, then it is not" (24) and the like, the second (25). Al-Razawi stated: "If he marries a woman and finds her a consort or a madwoman, if it is apparent that she is with her, he may return her to her family without divorce.)26( "

5-Al-Ifda': From a source that means making the place spacious, and in the sense of ending and reaching, and from it is the Almighty's saying: "Some of you led to one another" (27) meaning: it ended, and there was no barrier between them from intercourse. It means being alone with a woman, with or without intercourse with her, touching the ground with the palm of the hand, and making the woman's paths one because of sexual intercourse. The jurists used it in the same linguistic meanings, but the frequently used one and the one related to a ruling with its title is the last



meaning; So it is what is meant by research here. They differed as to the reality of the woman's sufficiency in two sayings:

The first saying: that he made the menstruation and urine pathways one, Sheikh al-Tusi went to him when he said: "Al-Ifda': to make the entrance to the male - which is the exit of semen, menstruation, and the child - and the exit of urine one... Between the two paths is a precise barrier, and the ifta' is the removal of that barrier".

The second saying: He made the course of menstruation and defecation one, which is the apparent meaning of Yahya bin Saeed (28), and the pride of the investigators declared the sincerity of the name al-Ifa' on each one of those concerned in reality. He is the chosen one of some contemporaries . )29(

Al-Sayyid Al-Yazdi said: "The discharge is more general than being with the union of urine and menstruation, or menstruation and defecation, or the union of all, even if it is apparent that the well-known is specialized in the former)30( "

And Al-Khoei's reasoning was that the interpretation of Al-Ifda' was not mentioned in the texts in order for it to have a legal reality, so it must be interpreted according to its linguistic meaning, which is to make the subject wide, and it is fulfilled by both meanings)31(.

Infidelity entails provisions that differ according to different resources. Infidelity may be due to the intercourse of the husband, or it may be due to the intercourse of a foreigner, and the wife may be small or large.

#### Second: Controversial defects:

1-Blindness, incapacitation, and proof of choice, even after entering into the contract, are well-known among the companions. Rather, it is unanimously agreed on the authority of Al-Murtada and Ibn Zahra in the first (32). It is the argument in it, as the correct one: a man marries a woman, and she is brought blind, leprous, or lame. He said: "She responds to her guardian, and he has the dowry on her guardian, and if there is a time when the man does not see her, the testimony of women over her is permissible.)33( "

2-Al-Ratq: and in establishing the option of ripping by movement, which is as it was narrated from the people of the language (34) and with it the mark declared in the rules (35) and in the laws (36) by saying: What is similar to it: its proof is a defect; Because it prevents intercourse, the justification of the ruling in the Qur'an and the verse is widespread, and its evidence is specific to the previous prohibition evidence.

3-Unfairness and fornication: Neither a woman nor a man is repelled by unfairness at all, and there is no apparent difference of opinion; For the original, and the two concepts of limitation and the last number, and especially the correct one: in a man he marries to a people, and if his wife is one-eyed and they do not make it clear to him, he said: "Do not reject" (37) with no objection.

Nor adultery at all, even if it is severe. Contrary to the cobbler, he never replied, in both men and women, whether the contract was preceded or right, whether the hadd punishment occurred with him or not.)38(

4-Al-Araj: nor Al-Araj according to the most similar, according to Al-Muqni', Zahir Al-Mabsout, Al-Khalaf and Al-Qadhi.)39(

#### Third: Common defects:

There are common defects, if they are found in a woman or a man, and they are considered a defect that justifies the dissolution, and they are: insanity, leprosy and leprosy.

#### **Second**

#### **Annulment of the marriage contract due to defects, according to other sects**

The four schools agreed on the permissibility of annulment for defects, and not every defect that one spouse finds in the other is considered justifying the annulment. And some others went to identifying specific defects that prove to the wife the choice to remain in the marriage or to request separation, and others believed that the defects could not be enumerated and enumerated, but could be limited to the rule (everything that is defective is a defect), and others disagreed that the defect is not a valid reason for separation (40) However, the consensus is the ruling, so they divided these faults into:

1-Sexual defects that prevent one from enjoying one's partner, such as coercion, impotence, and castration in a man, and semen and horns in a woman.

2- Defects that do not prevent enjoyment, but they are repulsive diseases in which it is not possible to approach the partner except with harm such as leprosy, insanity, leprosy, tuberculosis and syphilis.

And they also divided the defects in the same classification that the Imami jurists took into the defects of the man and the woman and the common defects(41).

The Hanafi school said: If a man becomes mad after marriage, and he has intercourse with a woman, even once, she does not have the right to request annulment, because her right is forfeited at once to spend, and what exceeds it is worthy of a debt, not a judiciary(42).



The Malikis differentiate between the fault of the husband and the fault of the wife, and they said: If the fault is with the wife, the husband has no choice or to ask for a differentiation with this fault, because it is a calamity that befell him, and a fault occurred in the contracted after the necessity of the contract, so the fault is similar to the thing sold. And if the fault occurred in the husband, then the wife has the right to request separation if the fault is insanity, leprosy, or leprosy, due to the severity of her harm and lack of patience with her(43).

But the Shafi'is excluded the occurrence of impurity after consummation, because it is not permissible to request annulment, because the purpose of the marriage is achieved, and she has fulfilled her right from it once(44).

According to the opinion of the jurists in the jurisprudence of the Companions and the Followers, what justifies the disagreement of the jurists in the following ages, while we find Imam (Al-Zuhri) rejecting marriage with defects for every incurable disease without specifying, Al-Sha'bi narrates on the authority of (Al-Harith) on (Ali), peace be upon him, who said that marriage is rejected before the man enters With his wife from four, of leprosy, leprosy, madness, and horn. The legal position on defects can be divided into three opinions:

First opinion:

Ibn Hazm, Sheikh of Al-Zahiriyah, believes that defects have no effect on the marriage contract, the same as the defects of the man and the defects of the woman, so if the marriage contract is valid, it is not annulled after its health by leprosy, leprosy, or insanity, and if the woman finds her husband indifferent or compelled, she does not have the right to demand The judge does not have to differentiate between them, and he does not have the right to set a term for him, rather she is his wife, if he wishes, he is retained, and if he wishes, he is divorced.

second opinion :

The jurists of the four madhhabs agree on it, and with them the Ja`fari, and it permits the distinction between spouses for defects, and the holders of this opinion were divided into two groups, one group making the distinction the right of the woman only if she found defects in the man, and the group rejecting the distinction between the man and the woman and giving both the right to request separation whenever defects are present Especially, the husband and wife are equal in that.

third opinion :

And it is he who permits the request for separation at all, and is represented by (Shreh), (Ibn Shihab Al-

Zuhri) and (Abu Thawr). Every defect in one of the spouses alienates the other and prevents the purpose of marriage, proves the right to ask for separation from the man and the woman.)45(

**Third**

**Conditions for the dissolution of the marriage contract for defect**

The fuqaha' differed regarding the conditions that must be fulfilled in a defective marriage in order for it to be valid for the effect on it. These conditions are:

1. That the defect was old, that the defect was prior to the contract.
2. That the defect is persistent and persistent, and it cannot be cured, or it may be after a long time.
3. The party requesting the annulment should be free from the defect that it objects to.
4. That the student of the group is ignorant of the defect and is not satisfied with it. If one of them marries the other while he is aware of a defect in the other, his right to separate is forfeited.

In order for the marriage contract to be dissolved due to fault, the following conditions are required:

First - that the wife be old, and he submits a request for separation to the judge. But if she was young and her guardian asked to separate, the judge was not to differentiate between them due to the possibility that the wife would agree to the defect after she reaches puberty.

Secondly - that she does not issue any evidence of her consent to the defect. But if he married her while she was aware of his condition, or she did not know, but when she learned after that, she consented to him explicitly or implicitly, then she has no right to request separation, except that her silence about the request for separation before or after the pleading for a period of time does not indicate her consent. Al-Jaafari said that this indicates consent and her right is forfeited unless she takes the matter to court as soon as she becomes aware of it.

Third - that it does not have a defect that prevents it from mixing with it. Because holding it at that time will not cause any harm to it.

Fourth - That the eye and the one in its meaning be an adult. If he is not an adult, he is given a deadline until the time of puberty, because his inability may be the result of his youth and he may be able to fulfill the wife's right to intercourse if he reaches puberty. Small, they are not neglected for lack of interest.

Fifthly - Al-Anin and those in his ruling should not have reached the wife sexually in this marriage, but if he reached her even once and then was unable to do so after that, she has no right to ask for separation (46).



### **Third section**

#### **Separation between spouses due to defects, according to Iraqi law and the laws of Arab countries**

The legal legislation on personal status did not go far from the opinion of jurisprudence in most if not all issues, but was based entirely on the Sharia in regulating the articles of personal status laws, and the Iraqi legislator, like others in Islamic countries, made the main source for the legislation of personal status law is Islam and the opinions of its jurists. The Iraqi law stated in its first article / paragraph 2, what it says, ((If there is no legislative text that can be applied, then it shall be governed according to the principles of Islamic Sharia that are most appropriate to the provisions of this law)).

In this section, we will review what the Iraqi law has led to the issue of separating spouses due to defects, and then we will review the opinions of Arab laws in this regard.

#### **First**

##### **Separation between spouses due to defects, in Iraqi law**

The Iraqi legislator addressed the differentiation due to defects and singled out articles for them, as mentioned in Article 43 in its paragraphs (4, 5, 6), which stipulated the following:

Article: 43

((First - The wife may request separation when one of the following reasons is available:

4- If she finds her husband afflicted or afflicted with something that he is unable to perform marital duties, whether for organic or psychological reasons, or if he was injured by that after consummation of her and it was proven that he could not be cured by a report issued by a competent official medical committee, provided that if the court finds that the reason for this is psychological She postpones the separation for one year, provided that her husband manages herself during that time.

5- If the husband is sterile or suffers from sterility after marriage, and she does not have a living child from him.

6- If, after the contract, she finds that her husband is afflicted with a disease that cannot be cohabited with him together without harm, such as leprosy, leprosy, tuberculosis, syphilis or insanity, or that he has subsequently contracted one of these or similar illnesses, provided that if the court finds, after a medical examination, that the ailment is hoped to disappear The separation is postponed until the

disappearance of that ailment, and the wife may refrain from meeting with the husband for the duration of the postponement. But if the court finds that the cause does not hope for its removal within an appropriate period, and the husband refuses to divorce and the wife insists on her request, the judge shall order the separation.

Secondly - the wife has the right to request separation before consummation, and in this case the court must rule for separation after the wife returns to the husband what she received from the dowry and all the money and fixed expenses he incurred for the purposes of marriage" (47).

The Iraqi legislator has gone to combine the opinions of all sects in formulating his articles on the differentiation of defects, and as we mentioned above, Article -43- was designated by the legislator to deal with the differentiation of the possible. Such as leprosy, leprosy, tuberculosis, syphilis, insanity, or he was subsequently infected with one of these or similar ailments.

And he has thus made the door legislature to add other defects if the court considers that they cause harm or that they are contagious diseases and reach the point of death or diseases that end the purposes of marriage. Islamic Sharia is the most appropriate for the case to be decided (48).

And the legislator did well when he went to demand a medical report that proves the condition of that illness and the possibility of its demise, or denies the possibility of its treatment.

The legislator did not go to the view of the majority of schools (49) of giving the right to both spouses to separate, and took the contrary opinion that was adopted by the Hanafi school only (50) and gave the wife only that right.

#### **Second**

##### **Separation between spouses due to defects, in Arab laws**

Separation between spouses due to defects, in Arab laws

The second requirement

The Egyptian law dealt with the issue of differentiation for defects in Law No. 20 of 1920, and before that work was carried out according to the most correct doctrine in the doctrine of Imam Abu Hanifa, but the practical reality turned the legislator in another direction, and the third opinion was expressed by (Al-Zuhri) and (Abu Thawr) then ( Ibn Taymiyyah) and (Ibn al-Qayyim), is the closest opinion to achieve the interests sought by the legislator, and the codification methodology allows the guardian to



choose freely from the jurisprudence of the sects, and obliges the judge to do so through the principle of privatization of the judiciary, which is what the Egyptian legislator tried in Law No. 25 of 1920 and others Among the laws that derive from Islamic law (51), articles 9-11 of Law No. 25 of 1920 stipulate the division provisions for defects, and this is the text:

Article 9: The wife has the right to ask for a separation between her and her husband, if she finds a persistent defect that cannot be cured, or it is possible after a long time and he cannot stay with him except with harm, such as insanity, leprosy and leprosy, whether that defect was in the husband before the contract and she did not know about it or whether it occurred After the contract and she was not satisfied with it, if she married him knowing of the defect or the defect occurred after the contract and she consented to it explicitly or implicitly after her knowledge, then it is not permissible to separate

Article (10): Separation by fault is an irrevocable divorce.

Article (11): Experts seek help in the defects for which the dissolution of the marriage is requested. It is clear from the texts of the law that it treats only non-reproductive and repulsive defects, as for the reproductive defects that occur in the husband, such as the curse, for example, the doctrine of justice is the most likely sayings in the Hanafi school, and it is the opinion of (Abu Hanifa) which gives the wife if she finds her husband one of the three defects: cowardice, impotence and castration To request a differentiation and the judge must answer her request. As for non-reproductive defects such as insanity, leprosy, and leprosy, they are governed by Law No. 25 of 1920, which gives the wife in this case the right to request separation under the following conditions:

1. That the defect is severe and cannot be cured, or it is possible, but after a long time.
2. It is not possible for the husband to stay without harm, and the harm is general and includes the wife and her children, and the experts among the doctors are the ones who are entrusted with deciding that
3. The wife should not be aware of the defect at the time of the marriage contract. If she becomes aware, she has no right to ask for separation.
4. She should not have been explicitly or implicitly consenting to the defect after the contract, for when she was informed and consented, she does not have the right to request separation.
5. That the wife ask for separation - because it is her right - from the judge, because the act of the judge is added to the husband as if he divorced her himself. If the woman is absent, it is permissible to ask for a

separation from her representative, and if she is incompetent or lacking in capacity, her guardian may request a differentiation, and in the case of reproductive defects, the indicted judge shall postpone The eunuch for a whole year to test them before the separation ruling, and there is no lesson in delaying other than the judge. The spouses agreed on that, or the wife delays her husband, and the postponement here for a period of one year is obligatory for the judge according to the text of Article 299 of the Sharia Procedures Regulations even if the man believes the wife and admits his fault, and the lunar year 345 Days are the basis for estimating the most correct opinion in our opinion, and the year begins from the day of the litigation, that is, from the day the wife files a lawsuit against her husband (52).

It is noted on these articles that the Egyptian legislator took the annulment of defects according to the Hanafi school

In limiting the annulment to the defects of the husband only, not to the defects of the wife, but he again permitted the annulment for other defects, taking the view of the majority of jurists in the case of a persistent defect that cannot be acquitted of in any case, as in the case of leprosy and leprosy, for example. In our opinion, a sound principle does not contradict the provisions of the tolerant Sharia, despite its violation of the doctrine of Abu Hanifa (53).

As for the Syrian law, the Personal Status Law dealt with the issue of defects and mentioned this in several articles, according to the following:

Article (105):

The married woman has the right to ask for a separation between her and her husband in the following two cases:

1. If he has one of the defects that prevent him from entering, provided that it is one of them.
2. If the husband becomes insane after the contract (54).

The law gave the right of choice to the wife without the husband, which is the doctrine of the tap without the public, but went to the same approach as the Iraqi law, and the law has proven the choice in the defects preventing entry, which is the sexual defect, which is what the tap said without the public as well, and the law stipulated the safety of women from the defect preventing entry. To look at her dog by differentiation, and it is the doctrine of the public in the requirement of her safety to prove the choice for her in the common defect, so he stipulated that the same defect be repulsive in her, and the first is to establish the choice by the release of the cause because the soul of the human being is recovered from others, what he



does not recover from himself, which is a view according to the Shafi'is, and he took The law is according to the doctrine of the public without the tap, who did not consider it a reason for annulment. It is noted here that the public proved the choice for both of them with physical defects and insanity from them (55).

Article (100) stipulates the conditions for the right to separate for the reason, stating:

1- The woman's right to request a separation foregoes due to the ills indicated in the previous article if she became aware of them before the contract or consented to what follows.

2- However, the right to separate by means of cursing does not forfeit under any circumstances.

This article in its first paragraph is taken from the opinion of the public and Muhammad ibn al-Hanafiya in part of it, which is insanity, and the Hanafi school believes that it does not miss the purpose of marriage, which is sexual intercourse, although it misses with these reasons other important purposes of housing, affection and others.

Article (107) specified the time for the annulment to which it may be postponed or not, and stipulated: If the ailments mentioned in Article (100) are not capable of disappearing, the judge shall differentiate between the spouses at once. difference between them).

This article is a distinction between curable and curable diseases and chronic incurable diseases that cannot be eliminated. Annulment is considered possible for the case in diseases that do not go away, and this is limited in Article (100) to diseases that prevent entry, so that modern and dangerous sexual and physical diseases that prevent entry are included, such as fatal heart diseases.

As for diseases that can be eliminated, consideration is deferred for a year, which is the duration of the curse by agreement. This law has been generalized in diseases that prevent entry, which is sexuality and the like, but in the case of women, insanity is added to it. As for the Kuwaiti Personal Status Law, it has dealt with cases of annulment of a defect in some detail in Articles (142-139). We find that many controls and criteria have been set for the defect that necessitates the annulment of marriage because of it, including: That the defect be repulsive or harmful and prevent enjoyment, as it made the right of annulment because of the defect to everyone who The spouses, and in view of the expansion of the Kuwaiti legislator in the defects that necessitate the annulment, it has made the matter of knowing these defects and the appropriate period of time to know them for those

with experience in this field, as in Article 142, and also did not rely on a particular doctrine in itself in terms of not specifying the defects for which the annulment is valid, and this gesture Good in terms of the emergence of new defects and the progress of medical science, which made the treatment of some of them affordable.

The Kuwaiti Jaafari Personal Status Law singled out (10) articles of the law that it specified for the annulment of the contract due to defects, and considered defects as a reason for annulment, not for separation, and divorce provisions are not applied to him, and made Articles (140-150) detailed articles for these defects and their provisions. The opinion of Al-Jaafari (56) that the law is specific to this doctrine, and differentiated between the defects of the husband and the wife and defined these defects as a kind of limitation in Articles (140-146), and the option was dropped from the husband if the defects occurred after the contract, with no difference between consummation and non-consummation, so the choice stipulated that it be defect before contract. It was also considered that infertility is not a defect for either the man or the woman (57).

It is noteworthy that this law, because of its modernity, has no studies or extensive explanations on its content, and it is, as a result, a manifestation of the opinions of Jaafari jurisprudence formulated in the form of legal articles.

#### **CONCLUSION AND RESULTS:**

1-Jurisprudence and laws in general are in agreement, even if in general, on the right of the husband or wife to request separation because of defects and defects. Some Arab laws, including the Iraqi law, included the opinion that the wife has the right to demand separation. It is the opinion of the Hanafi school only, in contrast to the opinion of the rest of the doctrines.

2-The laws differed in the term (fash) and (differentiation), as some laws considered it an annulment of the contract from its foundation, as some jurisprudential opinions went for it, and some of them considered it a separation and it is a type of divorce.

3-Legislation relied on medical reports and the opinion of experts in determining the defects and defects and their duration.

4-The laws gave sufficient respite for the defects that are subject to demise, in an attempt to restore the opportunity to build the family entity that is threatened with demise.

5-Most of the legislations did not specify specific reasons to make them stable. For example, they gave





the reasons to make the law flexible. It also gave the judge the power to rely on medical reports and experts to decide on those newly developed ailments.

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