

PREVENTIVE MEASURES FOR THE TWO MARRIED FROM DISEASES AND THEIR IMPACT ON THE MARRIAGE CONTRACT

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Abstract

The scope of this research is determined in the issues of preventive measures against diseases that the spouses must follow before concluding marriage. We look at the medical examination and its impact on the marriage contract, as well as the impact of diseases that affect the married in Iraqi law, UAE law, Syrian law, Algerian law and Qatari law in the solutions contained in these laws to these issues.

We have taken the method of comparison as a methodology in our research by clarifying the meaning of medical examination in language, terminology and law and clarified the definition of mental illness and infectious diseases and then clarified the legal nature of the medical examination before marriage as well as the statement of issues involved in the concept of mental and infectious diseases and their content in Iraq, Algeria, the Emirates, Syria and the country.

We have dealt with the subject of the research by dividing it into two chapters with the introduction and conclusion as follows: The first chapter- we dealt with everything related to medical examination from a legal point of view, while we dealt with in the second chapter- the statement of mental illness and infectious diseases and a statement of the position of Arab laws and legislations thereof.

Keywords: *preventive measures, marriage contract, medical examination, mental illness, infectious diseases*

INTRODUCTION:

Islamic law has taken care of the family as the first and basic nucleus in building society in order to preserve the human species and for that Islam has shown the rights and duties that are obligatory to the spouses, and the development of rules and foundations that preserve the family entity, and for this we find that Islamic law is very keen to keep this marital relationship existing and permanent, but there are cases that may show the marital relationship, which disturbs its elite and prevents its continuation, such as the presence of diseases and ailments between spouses.

Therefore, it is obligatory for the two people who are about to conclude the marriage to conduct a medical examination before marriage in order to ensure that the parties are free of mental diseases or infectious diseases that may be transmitted between the spouses after the marriage contract, which may affect the marital relationship between them, and as it is known that these diseases are numerous and vary to several types of mental illnesses, including infectious diseases of all kinds that disturb the marital life between the parties.

In our time, there have been countless diseases, which may negatively affect the lives of individuals, especially marital life between spouses, marrieds today urgently need to identify these diseases of all kinds and the extent of their impact on marital life and what are the effects that will result from the presence of such diseases in their lives, healthy marrieds can carry out marital duties to the fullest and correctly away from problems and difficulties.

Therefore, marrieds must take care of chronic diseases by conducting a continuous medical examination before marriage, and even after marriage, because this examination would reduce the presence of diseases, especially if they are treated from the beginning, and thus the married enjoys a married life free of diseases and the marital relationship between the two parties lives properly without anything disturbing its elite.

The subject of medical examination before marriage is one of the modern topics that have captured the attention of researchers, jurists and Islamic jurisprudence, and it is one of the chapters that arouse the interest of many interested in human rights and those working to take care of its affairs, and because of its impact on society and the protection of society from health and social diseases, especially with the spread of many serious infectious diseases that were not in previous nations.

chapters One: medical examination before the marriage contract



The medical examination before marriage is one of the important contemporary issues in human life before coming to the marriage contract, because Islamic law was keen on the safety and protection of the family, as well as to preserve the offspring from congenital, physical and mental deformities.

The first requirement: the nature of the medical examination before marriage:

Definition of Medical Examination Language:

- Examination: (Examination) is the search for something that has been (examined) about it in the door of cutting and (checking) and (examining) (1).
- Medical: from the medicine of any patient and the like, and medicine in the sense of medicine and treatment, and medicine is the wisdom and skill and treatment of the body and soul, including the science of medicine (2).

- Definition of medical examination idiomatically:

Medical examination is defined as any medical action carried out by the doctor by examining the patient's health condition through a virtual medical examination through the visible signs of the patient such as his appearance or body (3).

The medical examination is that the doctor observes the clinical signs and asks the patient about the symptoms and puts his hand on the patient's body, or the doctor may conduct laboratory tests, but the examining doctor is required to be qualified in the medical work he does, otherwise it may result in health damage that may exceed the disease (4).

- Definition of marriage idiomatically:

Marriage is defined as a contract that benefits the solution of the enjoyment of each of the contracting parties to the other in a legitimate manner, and leads to the consideration of the marriage contract as a response to the consideration of the possession of pleasure on the lawful face, and its purpose is to make this pleasure halal (5).

The Second requirement: Objectives and benefits of the medical examination before the marriage contract:

The medical examination before the marriage contract is a precautionary measure to choose a medically valid partner to complete the marriage contract correctly and continue married life without obstacles or medical problems, so one of the most important goals of the medical examination are:

- 1- Protecting both parties from infectious diseases before marriage, including the transmission of infection from sexual diseases such as (syphilis - gonorrhea) through the marital relationship after marriage (6).
- 2- Protection from genetic diseases after the marriage contract, especially with regard to their transmission to children, which leads to the prevention of infection of offspring with genetic diseases and serious blood diseases by diagnosing people with these diseases before marriage (7).
- 3- Providing health guidance to those about to marry by a doctor and advising them in the event of marriage of relatives and a difference in blood groups to protect human energy, as genetic and infectious diseases lead to a loss of human resources necessary in societies (8).

We will address the most important benefits of premarital medical examination for those who are about to conclude the marriage contract and its impact on their offspring in the future, as one of the most important benefits of the medical examination is:

- 1- The medical examination before marriage is one of the very effective means of protection to reduce the infection of those who are about to marry from genetic and infectious diseases, as it protects society from the spread of these diseases, especially with regard to the disabled in society and their financial and humanitarian impact, as this segment has more requirements than the requirements of other individuals (9).
- 2- Maintaining the safety of the fetus in the womb of the woman from disease, congenital malformations and physical disabilities as a result of one of the spouses suffering from a communicable and infectious disease that may be transmitted to the fetus, which may cause congenital malformations, disabilities and various diseases (10).
- 3- The medical examination before marriage contains social dimensions, as if it turns out after marriage that one of the spouses is infected with a contagious or repulsive disease, this may



be a reason for the termination of the marital relationship and the termination of the marriage contract by divorce or annulment because the other party does not accept, which may lead to disruption in married life (11).

4- The medical examination aims to verify the ability of each of the qualified spouses to practice the marital relationship properly with the other party in a way that satisfies the desires of both parties naturally, through the absence of pathological organic defects that stand in front of the desires of both parties to establish the correct marital relationship (12).

As for the negatives of the medical examination before marriage, they are as follows:

1- The misconception of people that the medical examination will show them all diseases, which may protect them from all genetic diseases, but this belief is wrong because the medical examination does not look for all genetic diseases, but it is possible for a medical examination to show two or five diseases known and prevalent in the area in which it is examined, as it is impossible to conduct a comprehensive examination of all diseases because some diseases are rare (13).

2- The result of the medical examination may result in a kind of social frustration, especially in the case of others seeing the result of the examination, which may lead to psychological and social damage and may eliminate its future, and as is known in medical matters, it may err or injure, as in the case of medical examinations that the woman has infertility or breast cancer (14).

3- The results of the medical examination remain probable and not certain in many diseases, and they are not conclusive evidence for the discovery of diseases in the future, as the matter remains on the accuracy of the medical team, doctors and nurses working in laboratories (15).

4- The medical examination may worry the lives of some people in the event that the person is told the result of the examination that he has an incurable disease that does not hope of curing it, as many people with diseases need hope and a good psychological state for the battle of life, so such medical examinations are a nightmare and a setback for them (16).

The third requirement: Iraqi law and Arab legislation from medical examination:

The medical examination before marriage is one of the important contemporary issues and is the result of scientific developments and research in the medical and scientific fields, and such scientific issues are important and the law must have a role in them to solve the legal problems that may result from them.

With reference to the Iraqi Personal Status Law No. 188 of 1959, we see that the Iraqi legislator has referred to the medical examination in paragraph (2) of Article (10), where it stipulates the following:

(2/ The statement shall be accompanied by a medical report confirming the safety of the spouses against communicable diseases and health contraindications and by other documents required by law) (17).

It is noted that the Iraqi legislator has indicated the need for a medical report showing that the spouses are free of infectious diseases, but what is taken on the Iraqi legislator is that he did not mention what are those infectious diseases that may be a reason for not convening the marriage.

With regard to Arab legislation, we believe that the Syrian legislator in the Syrian Personal Status Act No. 59 of 1953, paragraph (c) of article 40 stipulates the following:

(c) A certificate from a doctor chosen by the parties that they are free from communicable diseases and health impediments to marriage, and the judge may verify this by a doctor of his choice) (18).

However, after the issuance of Law No. (4) of (2019), which amended some paragraphs of the Syrian law prior to (1953), in paragraph (1), item (b), where it stipulated the following:

(b) A medical report that they are free from communicable diseases and health impediments to marriage, and the judge may verify this) (19).

Article 18 of the Qatari Personal Status Law No. 22 of 2006 stipulates the following:

(Each of the parties to the contract shall submit to the notary a certificate from the competent medical authority to the extent that it is free from genetic diseases, and from diseases determined by a decision of the National Health Authority in coordination with the concerned authorities, and the notary must notify each of them of the content of the medical certificate submitted by the other before documenting the contract. (20).

We note that the Qatari legislator has specified the genetic diseases that must not be available in



the spouses as a condition for the conclusion of marriage and did not mention mental illness as an impediment to marriage.

As for the Algerian Family law, the Algerian legislator has referred to the obligation of the parties to the marriage contract to undergo a medical examination before marriage, in article 7 bis of the Algerian Family law No. 5/2 of 27 February 2005, which stipulates the following:

(Applicants for marriage must submit a medical document not older than three months proving that they are free of any disease or any factor that may pose a danger that interferes with marriage, and the notary or civil status officer must ensure before writing the marriage contract that the parties undergo medical examinations and that they are aware of what they may reveal of diseases or factors that may pose a risk that conflicts with marriage, and this is indicated in the marriage contract) (21).

It is noted from the foregoing that the Algerian legislator has made the medical examination compulsory and binding on marriage applicants, that is, it did not leave it optional, and we also note that what distinguishes the Algerian family law from other Arab laws and legislation is that it has set a certain period for the medical document for the results of the medical examination for a period not exceeding (three months), meaning that it does not depend on the results of the medical examination in the event that the applicants submit a medical document for a medical examination for a period of more than (three months).

We believe that the Algerian legislature has been successful in this regard, since applicants may submit a medical document for medical examination for a period longer than the period mentioned in the law.

It is also noted that the Algerian legislator has obligated the notary to verify the marriage contract to verify the medical document submitted, and the notary is also obliged to notify and inform the parties of the importance of the results of the medical examination and the seriousness of the diseases that may affect the parties as a result of the failure to conduct the necessary medical examination.

Second Two: impact of diseases that affect the spouses on the marriage contract:

There are several diseases that may affect the spouses that will affect the marriage contract, whether at the beginning of the marriage contract or in the continuity of the marriage contract and the marital relationship or in the termination of the marriage contract, and these diseases, including what are mental may affect one of the spouses or be infectious diseases that may hinder the marital relationship between the spouses, so we will divide this chapters into the following demands:

The first requirement: definition of mental illness and infectious diseases:

Mental illness: It is a severe disorder that makes the individual unable to live in society, and unable to control his behavior and behavior, as there is a set of symptoms that indicate the mentally ill as he seems mentally ill alien to the group and society with which he lives (22)

Infectious disease: When referring to jurisprudence books, we did not find a specific definition of infectious disease as a compound term, and this does not mean that jurists omit this issue, so he used the search engine (Google) to find a scientific definition of infectious disease, where we found the following scientific definitions:

- It is a disease that is transmitted from one person to another or from a person to a group of people, and the cause is one of the microorganisms, as these microorganisms enter the human body (23)

- They are diseases that are transmitted to people through droplets, sneezing, mucus, semen and breast milk, and there are several types, including bacterial, parasitic and viral diseases (24)

Referring to the Iraqi Public Health Law No. (89) of (1981), we find that it defined infectious disease as a communicable disease, as it defined it as (it is the disease caused by infection with an infectious agent or the toxins generated by it, which results from the transmission of that factor from the source to the host directly or indirectly (25).

The second requirement - types of mental illness and infectious diseases:

There are several diseases, including mental and contagious, that may affect the co married, which may affect the conclusion of the marriage, and may affect the eligibility of the contractors in the marriage contract.

Subchapter one: Mental illnesses affecting spouses:

In the event that one of the spouses suffers from a mental illness, it may affect the eligibility of



the injured husband to conclude the marriage contract, and his actions may be in the judgment of the actions of the distinguished boy, or he may sometimes reach that his actions are the rule of the actions of the non-distinguished boy, so the mental illnesses are of the following types:

1- Delirium: It means the inability of a person to focus and leads to inattention and distraction of thoughts, and may lead to memory loss or disorder in the movements of the affected person (26).

2- Epilepsy: It is a disorder that occurs in the brain temporarily in the form of repeated seizures, which may lead the affected person to loss of consciousness, rigidity and loss of flexibility (27).

3 - dementia: It is a disease that affects the mind and prevents it from realizing and distinguishing things correctly, which distinguishes it from the crazy that the moron may be a quiet person and may be some of his words similar to the words of the wise and some of the other of his words the words of the unwise.

4- Crazy: It is a disease that affects the mind that prevents the mind from realizing things as they are, and the crazy person may be troubled and often agitated, and the crazy person is divided into two types:

The first type / crazy applied: is the crazy person often who never wakes up and continues his madness to several months or years, and this person is quarantined without disagreement between jurists until he recovers from his madness, the second type / crazy is not applied: is the person who feels crazy for certain times, and may go crazy and may wake up from his madness, in the case of waking up from madness is considered as rational adults where he is not quarantined at the time of waking up, and in times of his madness is quarantined (28).

Subchapter Two: Infectious Diseases Affecting the Spouses:

There are several diseases that may affect the married, including what may be infectious diseases that are transmitted from one person to another, and some of them may be non-communicable diseases that are not transmitted to the other, which may lead to affecting married life between spouses and not enjoying each other, because these infectious diseases are transmitted in several ways, including the process of sexual intercourse between spouses and may be transmitted through droplets or direct contact between spouses.

By reference to the Iraqi legislator in the Personal Status Law No. 188 of 1959 and its amendments, we find that the Iraqi legislator has allocated in paragraph (4) of Article (43) of the above law to diseases and ailments, where it stipulates the following:

(4- If she finds her husband obstinate or afflicted with what he is unable to perform marital duties, whether for organic or psychological reasons, or if he is injured by this after entering into it and it is proved that he cannot be cured by a report issued by a competent official medical committee.....)

article (5) and article (6) of article (43) also stipulates the following:

(5) If the husband is infertile or infertile after marriage and she has no surviving son.

6- If she finds after the contract, that her husband is afflicted with an illness that cannot be cohabited with without harm, such as leprosy, leprosy, tuberculosis, syphilis or insanity, or that he has subsequently contracted one of these ailments or similar)

(29) We see that the Iraqi legislator has allocated special legal texts for serious and repulsive diseases and ailments that afflict the husband, which makes the wife unable to carry out the marital relationship with the husband or enable the wife of herself because of the diseases and ailments or physical or psychological harm that may afflict her from establishing that marital relationship (30).

Subchapter Three: The Impact of Mental Illness and Infectious Diseases on the Marriage Contract:

Mental illness and infectious diseases have a great impact on married life, as mental illness has a significant impact on the eligibility of marriage in the marriage contract, and infectious diseases have a significant impact on married life from the marital relationship between spouses.

Mental illness is more dangerous than infectious diseases on the married, as this disease may affect the behavior and methods of the injured husband and in various mental and social aspects, and the injured husband cannot do his usual work and practice his normal daily activity, and is often dangerous to society and ineffective and usually unable to work and where his disorders are dangerous and affect social behavior (31).

The husband's attention disorders are often accompanied by an inability to concentrate, distraction in his thoughts, and an inability to perceive time and space (32).

After all of the above, we see the extent to which the mental illness of one of the spouses affects the husband's contract and the eligibility of the injured spouse to conclude the marriage contract and its impact on the marital relationship between the spouses.



As for the legal point of view, with reference to the Iraqi Personal Status Law No. 188 of 1959, we see that the Iraqi legislator in article 7 stipulates the following:

- 1- The full capacity to marry is required by reason and the completion of eighteen.
- 2- The judge may authorize the marriage of one of the mentally ill spouses if it is established by a report that his marriage does not harm society and that it is in his personal interest if the other spouse expressly accepts the marriage (33).

We see that the Iraqi legislator has stipulated that the two faces are free from mental illness to complete the marriage contract, but on the other hand, the judge has allowed the judge to grant a marriage license for the mentally ill, provided that the marriage is for his personal benefit and does not harm society, that is, does not harm children in the future, and all of this must be proven by a medical report issued by the Iraqi Medical Committee, as well as the condition that the other spouse is aware of this disease and expressly consents to it.

As for the Arab laws and legislations of personal status, in the UAE Personal Status Law No. 28 of 2008, we see that the UAE legislator in Article 30 stipulates the following: (1- The capacity to marry by reason, puberty and the age of puberty is completed at eighteen years of age for those who have not reached the age of Sharia beforehand.

2. A person who has attained the age of eighteen years shall not marry except with the permission of the judge and after verification of interest).³⁴

Where it turns out that the UAE legislator has taken the same position as the Iraqi legislator in requiring the integrity of the mind and freedom from mental illness in order for the marriage contract to be concluded properly.

Similarly, in the Algerian Family law (Order No. 2-5 of 27 February 2005), we see that the Algerian legislator in article 7 provides as follows:

(Applicants must submit a medical document not older than (3 months) proving that they are free from any disease or any factor that may pose a risk interfering with marriage) (35).

Infectious diseases have a dangerous impact on married life, as the Almighty prescribed for his servants to resolve sexual intercourse between spouses and establish the marital relationship between them and enjoy each other in a legitimate manner, so it is the wife's duty to empower herself for her husband, which is the wife's duty, otherwise she will be sinful and disobedient.

There are hadiths of the Prophet that prove this, including what was mentioned in Sahih Muslim in the hadith (3429) (Ibn Abi Omar told us, Marwan told us from Abu Hazem from Abu Hurayrah said: The Messenger of Allah (may Allah lead him and grant him peace) said ((In whose hand I breathe, no man invites his wife to her bed and repents of him, except the one who is in heaven is indignant with her, until he is pleased with her))(36)

From the foregoing, we see that it is the duty of the wife to empower herself for her husband, except in special cases, such as in the case of a contagious or dangerous disease, then the duty to empower herself from her husband is forfeited and she is not considered an outlier.

With reference to the Iraqi Personal Status Law No. 188 of 1959, the Iraqi legislator has devoted paragraphs 4, 5 and 6 of article 43 of the above law to diseases and ailments for which the wife is entitled to request separation, as it stipulates the following:

((4- If she finds her husband so stubborn or afflicted that he is unable to perform marital duties, whether for organic or psychological reasons, or if he is injured after entering into it and it is proved that he cannot 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, it shall postpone the separation for one year, provided that she enables her husband to take care of herself during it.

5- If the husband is infertile or infertile after marriage and she has no surviving son.

6- If she finds after the contract, that her husband is afflicted with an illness that cannot be cohabited with him without harm, such as leprosy, leprosy, tuberculosis, syphilis or insanity, or that he has subsequently suffered from one of these ailments or the like.....)) (37)

The same applies to Arab laws and legislations, including the UAE Personal Status Law, where paragraph (2) of Article (27) stipulates the following:

((2- The marriage contract shall be subject to the submission of a report from a competent medical committee formed by the Minister of Health.

It is useful to be free from diseases for which this law provides for a request for separation)) (38).

As well as Article (112), where the UAE legislator stipulates in Chapter Three the separation by the judge's ruling on the issue of differentiation for diseases and diseases, where it stipulates the following:

((1-If one of the spouses finds in the other an entrenched illness that is repulsive or harmful, such



as insanity, leprosy and leprosy, or that prevents sexual pleasure, such as impotence, horn and the like, he may request the annulment of the marriage, whether such defect existed before the contract or occurred after it.

2-His right to rescission shall be forfeited if he becomes aware of the cause before the contract or consents to it thereafter expressly or indicatively.

3- However, the wife's right to request annulment for reasons that prevent sexual pleasure shall not be extinguished in any case.

4- The court shall hear the case for dissolution of marriage for sexual reasons in a secret session)) (38).

From the foregoing, we see that the UAE legislator has given the right to the husband to request the annulment of the marriage contract and he is not entitled to if he finds in his wife a repulsive or harmful disease that prevents the enjoyment of his wife, and the court considers the husband's request for annulment in a secret session in order to preserve the spouses from defamation and public.

The third requirement: the impact of diseases that affect the spouses on the termination of the marriage contract:

Subchapter One: Definition of the defect causing the termination of the marriage contract:

Before starting the defects that cause the termination of the marriage contract, we must know the word (defect) in language and terminology:

- Definition of defect language as (defect, and games: stigma, such as defective, defective, transgressive necessary, which is defective) (39).

- A defect is defined terminologically as a physical or mental deficiency in one of the spouses, which would prevent the intention of marriage, and would make the life of the spouses unstable and unsuccessful (40).

Muslim jurists have clarified the defect in their books where Imam al-Shafi'i (may Allah have mercy on him) mentioned (and if it was virgin, then it was not for him to return it incomplete, nor did it have to accept it incomplete and return between its defective value and the correct price)

Al-Mawardi said (if the maidservant defective early, the buyer opened it and went virginity and then found it defective and wanted to return it was not for him because the virginity went lacked in both sides in the body and in the price) (41)

Subchapter two: Types of defects that the spouses are entitled to request the termination of the marriage contract:

There are certain defects through which both spouses have the right to request the annulment of the marriage contract, especially if the husband with the defect did not reveal to the other party his defect until after the marriage contract, so the defects are divided into three chapters:

1- Sexual defects that prevent the spouses from establishing the marital relationship, which are (cowardice, impotence and castration in the man - and the darn and horn of the woman)

2- Sexual defects that do not prevent the spouses from establishing a marital relationship, but they are repulsive and may cause sexual diseases to the spouses such as (leprosy, insanity, leprosy, tuberculosis and syphilis) (42)

The diseases mentioned above are illustrated as follows:

1- Defects that belong to the man: as one of the defects of the man, which is (Al-Jab) (cutting the male), which is cut off his male and female all or some of it, or there is no amount left of it as much as the glans, which prevents sexual intercourse, (impotence) is the one who is unable to bring his wife and there is no difference between the cause of impotence being a disease, weakness or old age of the husband (43).

2- Defects that concern women: One of the defects that affect women is (darn: which is in the case that the vulva is blocked or adhered to meat from the original and there is no path to penetrate the male in it) and (horn: is the presence of a bone or gland that prevents penetration into the vagina of the wife) and (Al-Afl: It is a foam present in the woman's vagina that prevents the pleasure of treading in it) and (vaporization of the vulva: It is a foul smell that comes out of the vulva when penetrating)

3- Common defects between men and women: There are defects that are common to the spouses, as in (insanity, leprosy, leprosy, and the release of urine or faeces during intercourse, as well as in the case of one of the spouses is a hermaphrodite problem or not a problem, in the event that one



of the spouses is a hermaphrodite problem, it is not valid to marry him until his condition is found (44).

With regard to personal status laws and Arab legislation, the Iraqi legislator has devoted two paragraphs of article 43 of the Iraqi Personal Status Act No. 188 of 1959 to diseases and ailments that allow the wife to request separation for reasons of illness, the fourth paragraph of which stipulates the following: (4) If she finds her husband obsessed or afflicted with such a condition that he cannot perform marital duties, whether for organic or psychological reasons, or if he is injured after entering into it and it is proved that he cannot 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, it shall postpone the separation for one year, provided that she enables her husband to take care of herself during it).

Where we see that the Iraqi legislator has allocated it with sexual ailments and diseases that affect the husband's reproductive system, which would prevent the husband from establishing a marital relationship with his wife.

The sixth paragraph of the contract stipulates the following: (6) If she finds after the contract that her husband is afflicted with an illness with which it is not possible to cohabit with him without harm, such as leprosy, leprosy, tuberculosis, syphilis or insanity, or that he has subsequently suffered from one of these ailments or the like, provided that if the Government finds, after a medical examination, that the illness is hoped to disappear, it shall postpone the separation until the disappearance of that illness, and the wife may refrain from meeting with the husband for the duration of the postponement. The court, that the illness is not hoped to disappear within an appropriate period and the husband refrained from divorce and the wife insisted on her request, so the judge rules the separation)(45).

In this paragraph, we note that the Iraqi legislature has devoted it to repulsive diseases and ailments that do not prevent the husband from establishing marital relations, and that it is not possible for the wife to be able and unwilling to establish a marital relationship with her husband.

With regard to the Arab personal status laws, we note that the Syrian legislator, in the Personal Status Act No. 59 of 1953, has given the wife the right to request separation from her husband who is suffering from a sexual disease in two cases, as stipulated in article 105, which stipulates the following:

The wife may request separation from her husband in the following two cases:

- 1- If it contains one of the ills preventing entry, provided that it is safe from it
- 2- If the husband goes mad after the contract) (46).

We note that the Syrian legislator has clarified that insanity is one of the diseases and ailments that prevent the establishment of the marital relationship, and that the wife has the right to request separation, that is, in the event that the husband is infected with a sexual disease that does not prevent the establishment of the marital relationship, then the wife is not entitled to request separation.

Article 106 also stipulates the following:

- 1- The right of a woman to request separation shall be forfeited because of the reasons set forth in the preceding article if she knew about them before the contract or consented to them afterwards.
- 2- However, the right to be separated on the grounds of impotence shall not be extinguished in any case).⁴⁷

Article 107 also stipulates the following:(If the causes mentioned in article 105 are irreversible, the judge shall separate the spouses immediately, and if their disappearance is possible, he shall postpone the case for an appropriate period not exceeding one year.

We note that he pointed out in this article that in the event that the husband's illness is one of the diseases that can be removed or treated, then the judge does not decide on the separation, but postpones it for a year, but if it turns out that the disease does not please cure or treat it, then the judge separates them immediately.

Article 108 also stipulates the following:

(Differentiation for the cause of a definite divorce).

Where we note from the previous articles that the position of the Syrian legislator is close to the position of the Iraqi legislator in the right of the wife to request separation for illness and sexual diseases, but we see that the Syrian legislator has considered the separation as a result of diseases



and diseases as a clear distinction, but did not indicate what is the type of Baynunah, is it evident minor or major Baynunah? It would have been better for the Syrian legislator to clarify the type of Baynunah.

With reference to the Algerian Family law, Ordinance No. 5-2 of 27 February 2005, specifically in paragraph 2 of Article 53, stipulates the following:

The wife may request a divorce for the following reasons:

(2- Defects that prevent the achievement of the goal of marriage) (48).

Where we note that the Algerian legislator has given the wife the right to request separation in the event that the husband is infected with a sexual disease, whether it prevents entry or repels her, that is, the Algerian legislator combined sexual defects that prevent and repulsive to establish the marital relationship and did not distinguish between them.

Subchapter Three: Conditions under which the spouses are entitled to request the termination of the marriage contract due to defect:

There are several conditions mentioned by jurists, as well as Arab laws and legislations that must be met in order for both spouses to have the right to request the termination of the contract due to the presence of a sexual defect or disease, including:

1- The defect cannot be cured, if the disease is close to cure and treat, in this case it is not permissible to request separation.

2 - The marital relationship cannot be established by the presence of a disease in the other spouse so that it is a general harm and severely harms the wife and children (49).

3 - Dissatisfaction with the defect, whether before entry or after entry or was at the time of the conclusion of the contract or after the conclusion of the contract expressly or indicatively, if the husband is satisfied with the defect by saying (I accepted the defect) or treading on it in this case he has no choice in the annulment (50).

4- The husband should not be aware of the defect at the time of concluding the marriage contract, because if he knew of the defect then he is not entitled to request separation, because in the conclusion of the marriage contract his acceptance of the defect is interpreted (51).

As for the Iraqi Personal Status Law No. 188 of 1959, the Iraqi legislator in paragraphs 4, 5 and 6 of Article 43 of the Iraqi Personal Status Law, which we have mentioned earlier, has mentioned the cases in which the wife is entitled to request separation for reasons and we conclude from the legal paragraphs that the conditions for requesting separation are:

1- The husband must have a disease that he cannot perform his marital duties, whether the disease is psychological or organic.

2- The disease would be the inability to increase offspring, as in the case of infertility.

3- The husband's illness is incurable or treatable (52).

CONCLUSION:

1- The medical examination before marriage is a precautionary measure to choose a medically valid partner to complete the marriage contract correctly and continue married life without obstacles or medical problems.

2- Protecting both parties from infectious diseases and psychological and genetic diseases before the marriage is concluded, including the transmission of infection from sexual diseases such as (syphilis - gonorrhea) by ensuring that the spouses are free of diseases before the marriage contract.

3- The medical examination is considered as providing health guidance to those about to marry by a doctor and advising them in the event of marriage of relatives and a difference in blood groups to protect human energy.

4- Some people may think that the medical examination will show them all diseases, which may protect them from all genetic diseases, but this belief is wrong because the medical examination does not look for all genetic diseases, as it is impossible to conduct a comprehensive examination of all diseases because some diseases are rare.

5- Mental illness is more dangerous than infectious diseases for the married, as this disease may affect the behavior and methods of the infected husband in various mental and social aspects, and the injured husband cannot do his usual work and practice his normal daily activity, and is often dangerous to society and ineffective and usually unable to work and where his disorders are dangerous and affect social behavior.

6- The impact of a mental illness on the husband's contract and the eligibility of the injured spouse to conclude the marriage contract and its impact on the marital relationship between the spouses



7- Infectious diseases have a serious impact on married life, as the Almighty began to his servants to resolve sexual intercourse between spouses and establish the marital relationship between them and enjoy each other in a legitimate manner, so it is the wife's duty to empower herself to her husband, which is the duty of the wife, otherwise she will be sinful and disobedient.

8- It is the duty of the wife to empower herself for her husband, except in special cases, such as in the case of a contagious or serious disease, then the duty to empower herself from her husband is forfeited and she is not considered an outlier.

9- There are certain defects through which both spouses have the right to request the dissolution of the marriage contract, especially if the husband with the defect did not reveal to the other party his defect until after the marriage contract, so the defects are divided into three parts:


A- Sexual defects that prevent the spouses from establishing the marital relationship, which are (cowardice, impotence and castration in the man - and the darn and horn of the woman)

B- Sexual defects that do not prevent the spouses from establishing the marital relationship, but they are repulsive and may cause sexual diseases to the spouses such as (leprosy, insanity, leprosy, tuberculosis and syphilis).

10 - Insanity is one of the diseases and ailments that prevent the establishment of the marital relationship, which the wife has the right to request separation, that is, in the event that the husband is infected with a sexual disease that does not prevent the establishment of the marital relationship, then the wife is not entitled to request separation.

MARGINS:

- [1] Mukhtar Al-Sahih, Sheikh Imam Muhammad bin Abi Zakaria Abdul Qadir Al-Razi, Librairie du Liban, Beirut - Lebanon, 1986, p 206
- [2] The Intermediate Dictionary, Arabic Language Academy, Bab Al-Zaa, Fourth Edition, Al-Shorouk International Library, Arab Republic of Egypt, 1425 AH - 2004, p 549
- [3] Dr. Mohamed Abdel Hamid and Dr. Osama Abdullah Qayed, Criminal Responsibility of Doctors, Second Edition, Dar Al-Nahda Press, 1990, p. 61
- [4] Fahd bin Abdullah Hazmi, Al-Wajeez fi Rulings of Medical Surgery and its Effects, First Edition, Al-Iman University Press, Yemen, without year of printing, p 14
- [5] Imam Muhammad Abu Zahra, Personal Status, Third Edition, Dar Al-Fikr Al-Arabi Press, Cairo - Arab Republic of Egypt, 1957, p. 17
- [6] Nouredine Ammari, Legal Mechanisms for Protecting the Spouses' Right to Health, Issue 4, Volume 11, Research published in Afaq Scientific Journal, 2019, p. 283
- [7] Samir Khairallah, Premarital Medical Examination, Issue 386, Research Published in the Journal of Security and Life, Naif Arab University for Security Sciences, Riyadh - Malteen, Saudi Arabia, 2013, p. 29
- [8] Musleh Abdul Hai Al-Najjar, Premarital Medical Examination in Islamic Jurisprudence, Issue 17, Research published in King Saud Journal of Science, Education and Islamic Studies, Riyadh - Saudi Arabia, 2004, p 1140
- [9] Osama Omar Suleiman Al-Ashqar, Jurisprudential Developments in Marriage and Divorce Issues, First Edition, Dar Al-Nafaes, Amman - Jordan, 2000, p 84
- [10] Safwan Muhammad Odaibat, Premarital Medical Examination, First Edition, Dar Al-Thaqafa Press, Amman - Jordan, 2009, p 89
- [11] Hassan Salah Al-Saghir Abdullah, The Legality of Obligating Medical Examination Before Marriage, New University House Press, Alexandria - Arab Republic of Egypt, 2007, p. 19
- [12] Sama Omar Suleiman al-Ashqar, *ibid.*, p. 85
- [13] Safwan Muhammad Odaibat, *ibid.*, p. 92
- [14] Aref Ali Aref Al-Qardaghi, Issues of Legitimacy in Human Genes, First Edition, Dar Al-Kutub Al-Ilmiyya Press, Beirut - Lebanon, 2012, p 128
- [15] Safwan Muhammad Odaibat, previous source, p. 95
- [16] Arif Ali Aref Al-Qardaghi, *ibid.*, p. 129
- [17] Paragraph (2) of Article (10) of the Iraqi Personal Status Law No. 188 of 1959
- [18] Paragraph (c) of Article (40) Syrian Personal Status Law No. (59) of (1953)
- [19] Paragraph (1) Clause (b) of the Syrian Personal Status Law No. (4) of (2019)
- [20] Article (18) Qatar Personal Status Law No. (22) of (2006)
- [21] Article (7) bis of the Algerian Family law No. (5/2) of February 27, 2005
- [22] Anas Abdo Shakshak, Psychiatry and Psychotherapy, Dar Al-Shorouk Press, Amman-Jordan, 2009, p 27
- [23] Seen at the following site: www.mawdoo3.com
- [24] Seen at the following site: www.altibbi.com

- 
- [25]Iraqi Public Health Law No. 89 of 1981
- [26]Hassan Omar Shaker Al-Mansi, *Mental Health*, First Edition, Irbid University Press, Jordan, 1998, p. 46
- [27]Dr. Rashid Hamid Zughayr, *Mental Health and Mental and Mental Illness*, Dar Al-Thaqafa Press, 1431 AH - 2010 AD, p. 285
- [28]Imam Muhammad Abu Zahra, *Personal Status*, Third Edition, Dar Al-Fikr Al-Arabi Press, 1377 AH - 1957 AD, p. 445
- [29]Article (43) of the Iraqi Personal Status Law No. (188) of (1959) and its amendments
- [30]Farouk Abdullah Karim, *The mediator in explaining the Iraqi Personal Status Law No. (188) of (1959) and its amendments*, Sulaymaniyah University Press, 2004, p 211
- [31]Dr. Abdul Sattar Ibrahim, *Modern Psychotherapy is a Power for Man*, The World of Knowledge, 1978, p 32
- [32]Hassan Omar Shaker Mansi, *Mental Health*, previous source, p. 45
- [33]Article (7) of the Iraqi Personal Status Law No. (188) of (1959) and its amendments
- [34]Article (30) of the UAE Personal Status Law No. (28) of (2008)
- [35]Article 7 of the Algerian Family law (Order No. 2-5 of February 27, 2005)
- [36]Imam Al-Hafiz Abi Al-Hussein Muslim bin Hajjaj Al-Nisaburi, *took care of her - Abu Suhaib Al-Karmi, Kitab Al-Nikah, Chapter on the Prohibition of Abstaining from Her Husband's Bed*, Hadith No. (3429), International House of Ideas Press, Riyadh - Kingdom of Saudi Arabia, 1419 AH - 1998 AD, p. 570
- [37]Article (43) of the Iraqi Personal Status Law No. (188) of (1959) and its amendments
- [38]Article (27) of the UAE Personal Status Law No. (28) of (2008)
- [39]Article (112) of the UAE Personal Status Law No. (28) of (2008)
- [40]Majd Al-Din Muhammad bin Yaqoub Firouzabadi, *The Surrounding Dictionary*, reviewed and taken care of - Anas Muhammad Al-Shami and Zakaria Gaber Ahmed, Dar Al-Hadith Library, Cairo - Arab Republic of Egypt, 1429 AH - 2008 AD, p 167
- [41]Muhammad Mustafa Shalaby, *Family Rulings in Islam*, Fourth Edition, Dar Al-Jamia Press, Alexandria - Arab Republic of Egypt, 1983, p. 587
- [42]Abi Al-Hussein Ali bin Muhammad bin Habib Al-Mawardi Al-Basri - investigated by Sheikh Ali Muhammad Awad and Sheikh Adel Ahmed Abdul Mawjoud - *Al-Hawi Al-Kabeer in the jurisprudence of the Shafi'i school - a brief explanation of Al-Muzni - Kitab Al-Bai'a - Chapter of Response to Defect - Part V - First Edition - Dar Al-Kutub Al-Ilmiyya - Beirut - Lebanon - 1414 AH - 1994 AD - p. 247*
- [43]Dr. Wahba Al-Zuhaili, *Islamic Jurisprudence and its Evidence*, Part VII, Second Edition, Dar Al-Fikr Press, Damascus - Syria, 1405 AH - 1985 AD, p. 514
- [44]Maher Maarouf Faleh Naddaf, *Differentiation of defects between spouses and contemporary means of proving them*, research submitted to the Faculty of Tabawi Sciences, Journal of Sharia and Law Sciences, University of Jordan, Issue 1 - Volume 46 - Supplement 1, 2019, p. 262
- [45]Dr. Wahba Al-Zuhaili, previous source, p. 514
- [46]Article (43) of the Iraqi Personal Status Law No. (188) of (1959) and its amendments
- [47]Article 105 of the Syrian Personal Status Law No. 59 of 1953
- [48]Article 106 of the Syrian Personal Status Law No. 59 of 1953
- [49]Article 53 of the Algerian Family law (Order No. 2-5 of February 27, 2005)
- [50]Imam Muhammad Abu Zahra, previous source, p. 357
- [51]A group of authors, *the Encyclopedia of Jurisprudence*, Kuwaiti Ministry of Awqaf and Islamic Affairs, Part 29, First Edition, Dar Al-Safwa Press, Kuwait, 1414 AH - 1993 AD, p. 69
- [52]Dr. Wahba Al-Zuhaili, previous source, p. 52
- [53]Paragraphs (4, 5, 6) of Article (43) Iraqi Personal Status Law No. (188) of (1959)