

**Law No. (19) of 2017<sup>1</sup>**  
**With Respect to the Promulgation of the Family Law**

**We, Hamad bin Isa Al Khalifa King of the Kingdom of Bahrain,**

Having reviewed the Constitution,

Legislative Decree No. (14) of 1971 with respect to Notarization,

Law of Sharia Courts Procedures promulgated by Legislative Decree No. (26) of 1986, as amended,

Court of Cassation Law promulgated by Legislative Decree No. (8) of 1989, as amended,

Judicial Authority Law promulgated by Legislative Decree No. (42) of 2002, as amended,

Law No (34) of 2005 with respect to the establishment of the Alimony Fund, as amended by Law No (33) of 2009,

And Family Provisions Law (First Part) promulgated by Law No. (19) of 2009,

The Consultative Council and the Council of Representatives approved the following law, which we have ratified and enacted:

**Article One**

The provisions of the attached Family Law shall be implemented.

**Article Two**

This Law may not be amended except after the approval of a committee of Sharia experts consisting of judges and Islamic Sharia scholars specialized in the Sunni jurisprudence and the Jaafari jurisprudence, provided that half of them shall be judges from the Sharia courts. Such a committee shall be formed by virtue of a royal order.

**Article Three**

Unless otherwise stipulated by this Law, a judge shall apply the provisions widely accepted by the Maliki school to those who follow the Sunni jurisprudence, and if there is no such Maliki provision, a judge shall resort to the other four schools of the Sunni jurisprudence. With respect to those who follow the Jaafari jurisprudence, a judge shall apply the provisions widely accepted by the Jaafari jurisprudence. If no such provision is available, a judge shall issue judgment based on the general jurisprudence texts and rules of the Islamic Sharia, mentioning the reasons for using such texts and rules in his judgment.

**Article Four**

Subject to the provisions of Articles (13) to (21) of the Judicial Authority Law promulgated by Legislative Decree No. (42) of 2002, the provisions of this Law shall apply to all disputes - that fall within the jurisdiction of the Sharia Courts - and to those who follow the Sunni jurisprudence or the Jaafari jurisprudence.

**Article Five**

a. Where there are differences in opinions between the Sunni jurisprudence and the Jaafari jurisprudence on matters related to marriage contracts, the provisions to be applied shall be decided based on the jurisprudence according to which the marriage contract was concluded.

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<sup>1</sup> Updated on 22/8/2019.

b. If the marriage contract was notarized or concluded outside the Kingdom of Bahrain, the applicable provisions shall be determined according to the following order:

- The jurisprudence that appears in the marriage contract.
- The jurisprudence agreed upon by the spouses at the time of filing the case.
- The jurisprudence followed by the husband at the time when the marriage contract was concluded.

c. With respect to matters pertaining to inheritance, donation, will or endowment, the jurisprudence followed by the Inherited person, donor, testator or the dedicator of endowment shall apply.

#### **Article Six**

The provisions of this Law shall apply to all cases in which a final substantive judgment has not been issued before getting in force.

#### **Article Seven**

The Family Provisions Law (First Part) No. (19) of 2009 shall be repealed, as well as any provision inconsistent with the provisions of the attached Law.

#### **Article Eight**

The Minister of Justice, Islamic Affairs and endowments shall issue the necessary orders for the regulation of marriage contracts, their procedures, notices related thereto and other orders necessary to implement the provisions of this Law.

#### **Article Nine**

The Prime Minister and ministers, each in his respective capacity, shall implement this Law which shall come into effect from the first day of the month following the date of its publication in the Official Gazette.

**King of the Kingdom of Bahrain**  
**Hamad bin Isa Al Khalifa**

**Issued at Riffa Palace:**  
**Date: 25<sup>th</sup> Shawwal 1438 Hijra**  
**Corresponding to: 19<sup>th</sup> July 2017**

## **Family Law**

### **Part One Marriage Provisions Chapter One Engagement**

#### **Article (1)**

Engagement is a proposal and a pledge for marriage.

#### **Article (2)**

It is forbidden to propose to a prohibited woman (*Muharrama*), even if the prohibition is of a temporary nature.

#### **Article (3)**

- a. Either of the engaged parties shall have the right to withdrawal from the engagement.
- b. If the engagement is not withdrawn and the engaged woman married another man, her marriage shall be valid.

#### **Article (4)**

1. According to the Sunni jurisprudence:
  - a. Whoever withdraw from the engagement shall return the gifts they had received if it still exists, otherwise its equivalent or the value thereof on the date it was received, unless custom stipulates otherwise or the gifts were of a consumable nature.
  - b. If the engagement was withdrawn by mutual consent of the two parties, each of them shall return the gifts they had received to the other party in the same manner referred to in the previous paragraph.
  - c. If the engagement was terminated as a result of death, a reason beyond the control of either party or force majeure that prevented marriage, no gifts shall be returned.
2. According to the Jaafari jurisprudence:
  - a. If both parties or either of them withdraw from the engagement, the gifts that are conditional upon the completion of marriage shall be returned, even if the condition is pivotal, unless the gifts were of a consumable nature.
  - b. If the gift was not conditional upon the completion of marriage, it shall not be returned if the recipient has transferred it or vitiated it.
  - c. If the engagement was terminated as a result of death, no gifts shall be returned.

### **Chapter Two Establishing Marriage Sub-Chapter One Definition of Marriage and Conditions in Marriage Contract**

#### **Article (5)**

Marriage is a legitimate contract between a man and a woman to form a family based on conditions and pillars, in the absence of impediments. The purpose of marriage is tranquility and protection of their chastity and it entails assuming mutual sharia rights and duties.

#### **Article (6)**

- a. Spouses shall abide by their conditions, except where a condition permits a forbidden matter (haram) or prohibits a permitted matter (halal).
- b. If a marriage contract contains a condition that contradicts the principle of marriage, the contract shall be deemed null and void
- c. If a marriage contract contains a condition that contradicts the purpose and aims of marriage, the condition shall be null and void but the marriage contract shall be valid.
- d. No condition shall be considered unless it is expressly stated in the marriage contract, proved by evidence or acknowledged by the spouses.
- e. In case of breaching a condition, spouses shall have the right to request the fulfillment thereof. In accordance with the Sunni jurisprudence non-fulfillment may lead to rescission of the marriage contract or a divorce (Tatleeq).

**Sub-Chapter Two**  
**Prohibitions of Marriage**  
**Article (7)**

Concluding marriage requires that the woman is not permanently or temporarily prohibited (*Muharramah*) to marry the man

**Section One**  
**Permanent Prohibitions**

**Article (8)**

For reasons of consanguinity, a person is prohibited to marry:

- a. His or her ascendants, however high in lineage.
- b. His or her descendants, however low in lineage.
- c. The descendants of his or her parents however low in lineage.
- d. The first degree of descendants of his or her grandfathers or grandmothers.

**Article (9)**

1. For reasons of affinity, a man is prohibited to marry:

- a. The spouse of his ascendants, however high in lineage, or the spouse of his descendants however low in lineage, once a marriage contract is concluded.
- b. The ascendants of his wife however high in lineage, once a marriage contract is concluded.
- c. The descendants of his wife of whom he had consummated the marriage with her, however low in lineage.

2. For reasons of affinity, a woman is prohibited to marry a man of the same kinship degree mentioned above in sub-paragraph (a) and (b) of paragraph (1) of this Article. A woman is prohibited to marry the descendants of her husband, once a marriage contract is concluded,

**Article (10)**

Prohibitions of marriage due to kinship shall also apply to prohibitions of marriage due to breastfeeding, if the breastfeeding had taken place in the first two years of birth, in five separate fulfilling breastfeeds in accordance with the Sunni jurisprudence or in the sharia considered conditions in the Jaafari jurisprudence.

**Article (11)**

- a. A person is prohibited to marry his or her descendant resulting from adultery, however low in lineage.
- b. All prohibitions set forth in Articles (8) and (9) of this Law shall apply to those born from adultery.

#### **Article (12)**

The following shall apply to a man who follows the Jaafari jurisprudence:

- a. The man who has intercourse with unknown woman under the belief that she is his wife (*Shubha*) or committed adultery with a woman, may not marry her female ascendants or descendants.
- b. The father nor the sons of a man who has intercourse with an unknown woman under the belief that she is his wife (*Shubha*) or committed adultery with a woman, may not marry that women.
- c. Urgent intercourse with an unknown woman under the belief that she is his wife (*Shubha*) after concluding a marriage contract or committing adultery shall not annul the marriage.

#### **Article (13)**

A person is prohibited to marry a woman who he claims under oath (*Li'an*) that she committed adultery, even if he lied to himself, neither shall he marry his daughter who he claimed under oath (*Li'an*) not to be his daughter.

### **Section Two Temporary Prohibitions**

#### **Article (14)**

- a. A man shall temporarily be prohibited from marrying the following:
  1. Wife of another man.
  2. A wife of another man in her waiting period (*Iddah*).
  3. A divorcee who has been divorced three times, may not remarry her ex-husband, until the lapse of her waiting period (*Iddah*) due to being divorced by another man who had consummated the marriage with her under a valid marriage.
  4. A non-Muslim woman, unless she is an adherent of a revealed religion (*Kitabiyya*).
  5. A woman during Ihram in a Hajj or Umrah.
- b. A man shall also be temporarily prohibited from marrying the following:
  1. Marrying more than four wives, even if one of them is in her waiting period (*Iddah*) after he divorced her, unless the waiting period (*Iddah*) relates to an irrevocable divorce (*Talaq Ba'ain*).
  2. Marrying a woman and her sister.
  3. Marrying a woman and her aunt. However, this is permitted under the Jaafari jurisprudence provided that the consent of the first wife is obtained if she is the aunt.
  4. Marriage of a Muslim woman to a non-Muslim man.

### **Sub-Chapter Three Guardianship**

#### **Article (15)**

Guardianship in marriage shall be in accordance with the following order:

1. According to the Sunni jurisprudence:

- a. Father, paternal grandfather, son no matter how low in lineage, full brother, paternal half-brother, son of full brother, son of paternal half-brother, full paternal uncle, half-paternal uncle, son of full paternal uncle, son of half -paternal uncle. The conclusion of a marriage shall be conditional upon obtaining the consent of the woman.
- b. If there are two guardians and are equal in the degree of relationship, either of them may conclude the marriage, and the one permitted by the engaged woman shall be appointed as guardian in the contract. If the two guardians disagreed between themselves and the engaged woman did not appoint either of them, the guardianship shall be transferred to the judge.
- c. If the guardian was absent intermittently, his whereabouts were not known or it was not possible to contact him, the guardianship shall be transferred to the next guardian.
- d. If the guardian prevented the marriage without a legitimate reason, guardianship shall be transferred to the judge.
- e. The judge shall act as a guardian to all those without guardians.

2. According to the Jaafari jurisprudence:

The guardian of a virgin is her father or her paternal grandfather, provided that the conclusion of a marriage shall be conditional upon obtaining her consent. In case of the absence of a father or paternal grandfather, the woman can solely marry herself if she was an adult and sane. There is no guardianship over a sane not virgin woman from a valid marriage.

#### **Article (16)**

The guardian shall be a Muslim adult sane male who is not during Ihram for Hajj or Umrah at the time of marrying off a woman under his guardianship.

#### **Article (17)**

a. A guardian may not refrain from marrying off a woman under his guardianship without a legitimate reason.

b. A guardian may not marry off a woman under his guardianship by force whether she was a virgin or not a virgin, young or old.

According to the Sunni jurisprudence:

c. A guardian may not marry off a woman under his guardianship to himself except with her consent and the permission of a judge

d. A judge may not marry off a woman under his judicial guardianship to himself nor to any of his ascendants or descendants.

### **Sub-Chapter Four Notarization and Permission to Marry**

#### **Article (18)**

The marriage shall be officially notarized. A non-notarized marriage may be proven by one of Sharia methods of proof.

#### **Article (19)**

A husband shall declare his marital status in the marriage document. If he is already married, he shall state the number of wives that he currently has.

#### **Article (20)**

A girl under the age of sixteen years old (Gregorian calendar) may not be married off except with the permission of the Sharia court after verifying the appropriateness of the marriage.

#### **Article (21)**

A judge may permit the marriage of an insane or mentally ill person subject to the following:

- a. The acceptance of the other party to marry him after knowing his condition.
- b. The issuance of permission shall be by a judge upon the request of the guardian.
- c. There shall arise a benefit from his marriage or perversion of a harm thereto.
- d. There must be no harm or risk to him, his wife or offspring, provided that this shall be proven by a certificate issued by a certified medical committee.

#### **Article (22)**

A judge shall not permit the marriage of a spendthrift person under trust except with the consent of his trustee and after ensuring that the amount of dowry is within his financial condition. If the trustee refuses, the judge shall request his consent within a specific period of time. If the trustee did not object or his objection was unworthy, the judge shall marry that person off.

#### **Article (23)**

- a. Proxy to conclude a marriage contract may be appointed by a special official power of attorney.
- b. If a woman gives a man a power of attorney to marry her off, he may not marry her off to himself, except if it is expressly stated in the power of attorney document.

### **Chapter Three Pillars, Conditions and Rights**

#### **Article (24)**

The pillars of a marriage contract are:

- a. Spouses: a man and a woman.
- b. Offer and acceptance.

#### **Sub-Chapter One Spouses**

#### **Article (25)**

The spouses shall fulfill the following conditions:

- a. To be identified clearly.
- b. Their consent to the marriage.

#### **Sub-Chapter Two Offer and Acceptance**

#### **Article (26)**

A marriage is concluded by making an offer by one of the contracting parties and the acceptance thereof by the other party. Such offer and acceptance shall be expressed by the free will of both parties in specific Sharia terms, and by understandable gesture or in writing in case of inability to speak, subject to provisions of Article (27) of this Law.

#### **Article (27)**

An offer and acceptance shall meet the following conditions:

- a. They should be reciprocal expressly or implicitly.
- b. They should be made in the same council actually or constructively.
- c. They should be complete, unconditional and not dependent on a future event.

### **Sub-Chapter Three Contract Conditions**

#### **Article (28)**

Subject to the provisions of Articles (20), (21), (22) and (25) of this Law, for a marriage contract to be valid in accordance with the Sunni jurisprudence, it must fulfill the following conditions:

- a. Presence and consent of the guardian.

A marriage shall be deemed valid without the involvement of a guardian upon consummation of marriage if the marriage contract is valid in accordance with the law of the land where it was made. If the wife is a Bahraini national, the consent of the guardian must be obtained when legalizing the marriage contract.

- b. Presence of the legal number of witnesses.
- c. Non-denial of dowry.

#### **Article (29)**

A witness shall be a Muslim adult sane male who is hearing the offer and acceptance and fully understands that marriage is intended.

#### **Article (30)**

Dowry is money or benefit paid by a man for the purpose of marriage and it shall be stated in the marriage contract.

#### **Article (31)**

Dowry is the wife's right; she may use it as she may wish in a reasonable manner.

#### **Article (32)**

- a. The dowry shall usually be paid immediately in advance, but it may be deferred in whole or in part at the time when the contract is being concluded. It shall not be rescinded by the denial thereof or being silent. In case of silence, the woman shall be entitled to the dowry of an equivalent.

- b. The dowry is a must in a valid contract and the wife is entitled to the whole dowry upon an actual consummation of marriage, and in accordance with the Sunni jurisprudence, she shall also be entitled to it upon death.



c. The wife shall be entitled to the deferred part of the dowry by the end of the term of deferment, death or divorce (*Bai'noona*).

#### **Article (33)**

- a. A wife may refuse to consummate marriage until the advanced part of dowry is paid.
- b. If a wife agrees to consummate marriage with her husband before receiving her dowry, it becomes a debt upon the husband.

#### **Article (34)**

Subject to the provisions of Article (4) of this Law, if a fiancé pays money to his fiancée as part of the dowry prior to concluding the contract, and either party withdraw from concluding the contract or dies, whatever was given shall be returned in its substance if it still exists, otherwise its equivalent or the value thereof on the date it was received.

#### **Article (35)**

According to the Sunni jurisprudence, if the spouses, before the consummation of marriage, had a dispute over the payment of the dowry and there was no evidence to support either of them, the word shall be that of the wife in denying under oath the receipt thereof. If such dispute is after the consummation of marriage and there was no evidence to support either of them, the word shall be that of the husband in confirming under oath the payment of the dowry.

According to the Jaafari jurisprudence, if the spouses had a dispute over the payment of the dowry and there was no evidence to support either of them, the word shall be that of the wife in denying under oath the receipt thereof, regardless whether the dispute had occurred before or after the consummation of marriage.

#### **Article (36)**

- a. A wife shall not be responsible for providing any of the fixtures and furniture of the matrimonial home, and if a wife provides anything thereof it shall belong to her.
- b. A husband may make use of the fixtures and furniture belonging to the wife as long as they remain married and he shall not be responsible for it except in case of encroachment.

#### **Article (37)**

According to the Sunni jurisprudence, competence is:

- a. A requisite condition of marriage, it is the sole right of the wife and her guardian.
- b. Competence means righteousness in religion and whatever is considered virtuous by custom.
- c. If a man claimed to be competent and was found not to be, the wife or her guardian shall have the right to rescinded (*Faskh*) the marriage.
- d. Compatibility of the ages of the spouses shall be the sole right of the wife.

### **Sub-Chapter Four Rights of Spouses**

#### **Article (38)**

Mutual rights and obligations of the spouses:

- a. Enjoyment of each other and the protection of their chastity.
- b. Gracious treatment and the maintenance of the family.
- c. Mutual respect to each other, and to the parents and relatives of each other.

d. Caring for, nurturing and raising of their children to provide them a good upbringing.

#### **Article (39)**

Rights of the wife upon the husband:

- a. Caring for her, spending on her and treating her graciously.
- b. Non-interference in her private property, which she shall have the right to dispose of in a reasonable manner.
- c. Refraining from harming her financially or morally.
- d. In case of having two or more wives, treating each wife equally in terms of nights spent with each of them and spending on them.
- e. Permitting her to visit her family in a reasonable manner..
- f. Shall not deprive her from having children from him.

#### **Article (40)**

Rights of husband upon the wife:

- a. Caring for him, obeying him and treating him graciously.
- b. Caring for his children from her.
- c. Preserve his honor in herself, his property and home in his presence or absence.
- d. Not to refrain from having children from him except upon his permission or for a good reason.
- e. Not leaving the matrimonial home without a legitimate reason.

### **Chapter Four Types of Marriage**

#### **Article (41)**

A marriage may be valid or invalid according to the types of marriage in both the Sunni jurisprudence and the Jaafari jurisprudence.

#### **Article (42)**

- a. A valid marriage shall be a marriage that meets the required pillars and conditions and is free of any impediments.
- b. All types of a valid marriage shall have full legal and Sharia effects from the conclusion thereof.

#### **Article (43)**

1. According to the Sunni jurisprudence, an invalid marriage is one that has an invalid contract pillar or condition or contains an impediment.
2. According to the Jaafari jurisprudence, an invalid marriage is one that has an invalid contract pillar only.

#### **Article (44)**

An invalid marriage shall not have any of the effects of marriage before the consummation of marriage.

#### **Article (45)**

a. An invalid marriage shall not have any of the effects of marriage after the consummation of marriage in the following cases:

1. If one of the marriage pillars is invalid;
2. If the woman was permanently or temporarily prohibited (*Muharramah*) to marry the man, proving that they knew of such prohibition. Claiming ignorance shall not be deemed an excuse if such claim is not acceptable from someone in the position of the claimant;
3. The absence of the guardian and the two witnesses together in the contractual council according to the Sunni jurisprudence.

b. In all cases other than the aforementioned, an invalid marriage after the consummation of marriage, shall result in the following:

1. Prohibition of affinity;
2. The determined dowry or the dowry of an equivalent;
3. Alimony if the woman was not aware of the invalidity of the marriage contract;
4. Parentage;
5. Waiting period (*Iddah*).

**Chapter Five**  
**Effects of Marriage**  
**Sub-Chapter One**  
**Alimony**  
**Section One**  
**General Provisions**

**Article (46)**

Alimony is one of the rights of the supported persons, it includes providing food, clothing, home including medication, service and other benefits required by custom.

**Article (47)**

- a. Alimony is determined based on the supporter's financial conditions and the situation of the supported persons taking into consideration the place, time and customs.
- b. Subject to the provision of the preceding paragraph, alimony may be increased or decreased in line with the change of the status of the supporter and the supported person.

**Article (48)**

- a. A court case to increase or decrease alimony may not be heard prior to the lapse of one year from imposing it by a final judgment except in exceptional circumstances
- b. An increase or decrease in alimony shall be computed as from the date of proving the right following a judicial claim.

**Section Two**  
**Marital Alimony**

**Article (49)**

A wife shall be entitled to alimony from the husband upon the conclusion of a valid contract even if she was wealthy if she enabled him to consummate with her even if constructively.

**Article (50)**

A judge may order, upon a request forwarded by a wife, a temporary alimony for her and her children and order her return to the matrimonial home in case she was removed from it. The judge's decision in both instance shall be subject to expeditious enforcement by the force of law.

#### **Article (51)**

- a. If a wife requests the offsetting of the debt of her alimony against a debt that she owes to her husband, her request shall be approved even without the consent of the husband.
- b. If a husband requests the offsetting of his wife's alimony against a debt that she owes to him, his request shall not be accepted, except if the wife is wealthy and is capable of paying the debt from her own money.

#### **Article (52)**

A wife's alimony shall not be rescinded by incapability or insolvency and it shall have seniority over all debts.

#### **Article (53)**

1. According to the Sunni jurisprudence:
  - a. A wife in a waiting period (*Iddah*) following a revocable divorce (*Talaq Rajie*), rescission (*Faskh*) or consummation in an invalid marriage shall be entitled to receive a full alimony.
  - b. A wife in a waiting period (*Iddah*) following an irrevocable divorce (*Talaq Ba'ain*) for a reason attributed to her shall not be entitled to an alimony, but she is entitled to an accommodation during all her waiting period (*Iddah*).
  - c. If a divorcee is pregnant, her ex-husband shall pay full alimony during her waiting period (*Iddah*) which shall end upon giving birth.
2. According to the Jaafari jurisprudence:
  - a. A wife in a waiting period (*Iddah*) following a revocable divorce (*Talaq Rajie*) shall be entitled to receive a full alimony.
  - b. A wife in a waiting period (*Iddah*) following an irrevocable divorce (*Talaq Ba'ain*) shall not be entitled to an alimony.
  - c. If a divorcee is pregnant, her ex-husband shall pay full alimony during her waiting period (*Iddah*) which shall end upon giving birth.

#### **Article (54)**

- a. If a wife refuses to move to the matrimonial home or leaves it without a legitimate reason or if she prevents her husband from entering it without a legitimate reason, her right to the alimony shall be rescinded upon a court judgment.
- b. The refusal of a wife to move to the matrimonial home shall be considered justifiable if the husband cannot not be trusted to protect her, her honor or her property, or if he fails to pay the immediate part of her dowry before the consummation of marriage, or did not prepare the matrimonial home. And in accordance with the Sunni jurisprudence, also if he refrains from supporting her, or if she fails to enforce an alimony judgment in her favor because he has no ostensible assets.
- c. The disobedience of a wife (*Nushooz*) shall be proven by her refraining from complying to a final judgment to follow her husband to the matrimonial home.

#### **Article (55)**

The judgment requiring a wife to follow her husband to the matrimonial home, shall not be implemented by force. If she refuses to comply, she shall be deemed to be disobedient (*Nashez*) and her alimony shall be rescinded. And according to the Sunni jurisprudence, both spouses or either of them shall have the right to apply for separation and the returning of whatever dowry paid by the husband.

#### **Article (56)**

- a. It shall not be deemed an act of disobedience (*Nushooz*) that results in the rescinding of marital alimony, if a wife goes outside the home for what is deemed a sharia duty, or if she goes outside the home for legitimate work if her husband was aware of her work at the time of their marriage, or if going to work is an expressed condition in the marriage contract, or her husband has permitted that after marriage.
- b. It shall be deemed an act of disobedience (*Nushooz*) that results in the rescinding of marital alimony, if a wife goes outside to work in detriment to the husband's rights despite his request to her not to go.
- c. A husband shall not force his wife to work.
- d. A husband, after giving his wife his consent to work, may not force her to share the family expenses, reduce the alimony, give part of her salary unless they both agreed otherwise.
- e. A wife shall bear the expenses arising from her going to work.

#### **Article (57)**

The obligation to pay marital alimony shall end by:

- a. Settlement.
- b. Acquittance.
- c. Death of one of the spouses in respect of the current expenses. Expenses agreed upon previously or claimed in a court case prior to the death, shall be deemed as a debt owed by the husband and shall be paid from his inheritance if such expenses are awarded to the wife.

#### **Article (58)**

A husband shall provide a private, appropriate, furnished home for his wife, in a manner appropriate to his financial condition.

#### **Article (59)**

- a. A wife shall reside with her husband in the home he has prepared, and she shall move with him if he moves to another home, unless otherwise is stipulates in the marriage contract by the wife, or if it is proved that the relocation has caused harm to her.
- b. A wife may stipulate a condition that the husband may not move her from her country.

#### **Article (60)**

- a. A husband may accommodate with his wife in the matrimonial home his parents and his children from another wife, if necessary, provided that this shall not cause harm to the wife.
- b. A wife may accommodate her children from another husband in her matrimonial home if they have no custodian other than her or they would be harmed if they separate from her, subject to the implicit or explicit consent of the husband; the husband shall have the right to withdraw such consent if it caused him harm.

#### **Article (61)**

- a. A husband may not accommodate another wife with his wife at the same home except with her consent, and she may withdraw such consent if there is a justifiable reason.
- b. A wife shall have the right to request a separate matrimonial home from the home of the husband's family, even if the husband stipulated otherwise in the marriage contract and the wife accepted such condition, if it causes her harm.

### **Section Three Relatives Alimony**

#### **Article (62)**

- a. The alimony of a child who has no financial resources shall be upon his or her father, until the daughter gets married or the son reaches the age that his equivalent are normally able to earn a living.
- b. Alimony of a grown-up son, who is incapable of earning a living because of a disability or other cause, shall be upon his father if he has no financial resources to support himself.
- c. Alimony of a daughter, if she gets divorced or becomes a widow, shall be upon her wealthy father or a relative who has a duty to support her, unless she has the financial resources to support herself.
- d. If the financial resources of a son or a daughter is not sufficient to support him or her, his or her father must cover the shortfall.
- e. Alimony of a son or a daughter, who has no father or paternal grandfather or if they cannot support him, shall be upon the wealthy mother.

#### **Article (63)**

Subject to the provision of Article (47) of this Law, the determination of the amount of children's alimony after the divorce or separation of parents, shall be based on the basic needs, sufficiency and the financial ability of the supporter.

#### **Article (64)**

- a. A wealthy son or daughter, whether young or a grown-up, shall support his or her parents if they have no financial resources to support themselves.
- b. If the financial resources of the parents are not sufficient to support them, their wealthy sons or daughters must cover the shortfall.
- c. The alimony of parents shall be divided between their sons and daughters based on the financial ability of each of them.
- d. If alimony is provided by one of the sons or daughters after a court judgment binding them all to alimony, he or she shall be entitled to make a claim against each of them in accordance with the judgment.
- e. If one of the sons or daughters willingly paid alimony to his or her parents, whether before or after the judgment, he or she shall not have the right to make a claim against his or her siblings.

#### **Article (65)**

According to the Sunni jurisprudence, if there is a number of persons entitled to alimony and the supporter is unable to support all of them, the alimony of the wife shall take precedence, then the alimony of the children, then the alimony of the parents and finally the alimony of the relatives. According to the Jaafari jurisprudence, alimony for the wife shall take precedence over the children's and parents' alimony.

#### **Article (66)**

- a. Alimony for ascendants, no matter how high in lineage, shall be the duty of their descendants, and alimony for descendants, no matter how low in lineage, shall be the duty of their ascendants.
- b. Alimony for relatives shall accrue from the date fixed by a court judgment.
- c. Differences in religion shall have no effect on the entitlement to alimony by ascendants and descendants.
- d. According to the Sunni jurisprudence, the children's alimony may be claimed for no more than twelve months prior to the date of making a case to the court.

#### **Article (67)**

According to the Sunni jurisprudence, alimony for any person, entitled thereto, shall be borne by his inherited wealthy relatives according to their ranking order and share in the inheritance. If such heir is insolvent, alimony shall be the duty of the heir next in line.

### **Sub-Chapter Two Proof of Parentage Section One Paternity**

#### **Article (68)**

Proof of Paternity to the father may be established by any Sharia methods of proof, and shall give rise to all of the Sharia effects of parenthood.

#### **Article (69)**

According to the Sunni jurisprudence, the proof of paternity to the mother, whether from a lawful or unlawful relationship, shall be established by the incident of birth or the admission of the mother, and such proof shall give rise to all of the Sharia effects of parenthood.

According to the Jaafari jurisprudence, if the birth resulted from unlawful relationship, there shall be no inheritance between them.

#### **Article (70)**

Paternity may not be established by adoption, nor shall it give rise to the Sharia effects of parenthood.

#### **Article (71)**

The minimum gestation period shall be six lunar months and the maximum shall be one lunar year.

### **Section Two Parentage and Methods of Proof**

#### **Article (72)**

Proof of parentage shall be established by one of the following methods:

- a. A valid marriage contract or intercourse with a woman in the belief that she is his wife (*Shubha*), subject to the provision of Article (71) of this Law;

- b. Admission to all its sharia considered conditions;
- c. Legally accepted testimony (*bayyinah Sharia*).

#### **Article (73)**

The parentage of a woman's child in a valid marriage shall be proven to her husband according to three conditions:

- a. The lapse of the minimum gestation period after the marriage contract.
- b. It cannot be proved that it was not possible for the spouses to get together because of a physical obstacle from the date of the marriage contract to the date of birth.
- c. An obstacle that may prevent intercourse had not happened after the marriage and continued to more than one lunar year. If the obstacle disappeared, the minimum gestation period must lapse from the date of the disappearance of the obstacle to prove the parentage.

#### **Article (74)**

The parentage of a child from a divorced or deceased man is proved if the woman gave birth to him or her prior to the lapse of one lunar year from the date of the divorce or death.

#### **Article (75)**

If a valid marriage contract is made and the wife became pregnant before the marriage contract is notarized, the pregnancy shall be attributed to the husband if pregnancy is proved to have happened after the contract. If the husband denied that the is pregnancy from him, Sharia means shall be applied to prove the parentage.

#### **Article (76)**

In cases, in which the parentage of a child is established by the marriage bed in a valid marriage, the man may deny parentage under oath (*Li'an*) in accordance to sharia considered conditions of oath (*Li'an*), provided that he did not previously admit that paternity expressly or implicitly.

#### **Article (77)**

The spouses shall be subjected to a DNA test before going into an oath (*Li'an*) process to deny the parentage.

#### **Article (78)**

If an oath (*Li'an*) process takes place, a judge shall rule that the child is not the son or daughter of the man, and he shall not bear the Sharia effects of parenthood.

#### **Article (79)**

a. Confession of parentage, even during a death illness, shall prove the parentage upon the following conditions:

1. The confession must relate to a person of unknown parentage.
2. The confessor must be a sane adult.
3. The age difference between the confessor and the person, whose parentage is confessed, permits believing such confession.
4. The person, whose parentage is confessed, believes the confessor if he or she is a sane adult.
5. There is no other person who claims the parentage of the same person.



b. Avowal of paternity (*Istilhaq*): an admission of paternity by a man under the conditions set out in the preceding paragraph.

#### **Article (80)**

In case of mixing up of babies in hospitals, or in case of accidents or disasters, a DNA test shall be carried out to remove confusion.

### **Part Two Separation of Spouses**

#### **Chapter One General Provisions**

#### **Article (81)**

Separation of the spouses may take place by:

- a. The will of the husband which is termed a divorce (*Talaq*).
- b. A request by the wife and consent of the husband against the payment of a consideration which is termed a dissolution of marriage (*Mukhala'h*).
- c. A court judgment which is termed a divorcement (*Tatleeq*), or a rescission (*Faskh*) or a separation (*Tafreeq*) as the case may be.

#### **Chapter Two**

##### **Divorce**

#### **Article (82)**

1- According to the Sunni jurisprudence:

- a. Divorce is the dissolution of a marriage contract in a specific manner stipulated by the Sharia or custom.
- b. The divorce shall be effected by explicit uttering or in writing, and in case of inability to speak or write, by understandable gesturing.

2- According to the Jaafari jurisprudence:

- a. Divorce is the dissolution of a marriage contract in a specific manner stipulated by the Sharia.
- b. The divorce shall be effected by explicit uttering, and in the case of inability to speak, in writing or by understandable gesturing.

#### **Article (83)**

1. According to the Sunni jurisprudence:

- a. Divorce may be effected by the husband in person or through a proxy appointed by a special power of attorney stipulating the type of and time of divorce, even if the power of attorney is in favor of the wife. The husband shall have the right to revoke the power of attorney.
- b. A first-time irrevocable divorce (*Talaq Ba'ain*) may be effected by a woman if her husband empowered her to divorce herself by a condition stipulated in the marriage contract.
- c. A first-time revocable divorce (*Talaq Rajie*) may be effected by a woman if her husband authorized her during marriage, and he may revoke it unless the wife has acted upon it.

2. According to the Jaafari jurisprudence:

- a. Divorce may be effected by the husband in person or through a proxy appointed by a special power of attorney stipulating the type of divorce.

b. Divorce may be effected by the wife if her husband gave her a power of attorney to divorce herself.

#### **Article (84)**

a. A divorcer must be a sane adult who has the ability to discern and decide, and according to the Jaafari jurisprudence, the intention shall be added to the aforementioned attributes.

b. a divorce by a juvenile, an insane, a mentally ill person, a person under duress or by a person who lacks comprehension because of intoxication, anger or otherwise shall have no effect.

#### **Article (85)**

A divorce may not be effected over a woman unless she is in a valid marriage and not in a waiting period (*Iddah*).

#### **Article (86)**

1. According to the Sunni jurisprudence:

a. A divorce shall not be effected if it is conditional upon doing something to encourage it, or not doing something to prevent it, unless divorce is intended.

b. A divorce shall not be effected by breaking the oath of divorce or forbiddance unless divorce is intended.

c. A divorce associated with a number whether verbally, in writing or by gesture shall be counted as one divorce.

2. According to the Jaafari jurisprudence, a divorce shall not be valid unless it is complete and the wife is in a state of cleanness other than the cleanness after intercourse and in presence of two competent witnesses.

#### **Article (87)**

There are two types of divorce; revocable (*Rajie*) and irrevocable (*Ba'ain*):

a. A revocable divorce (*Talaq Rajie*) shall not end the marriage contract until the lapse of the waiting period (*Iddah*).

b. An irrevocable divorce (*Talaq Ba'ain*) shall end the marriage contract immediately upon the occurrence of the divorce.

According to the Sunni jurisprudence, there are two types of irrevocable divorce (*Talaq Ba'ain*):

a. Minor irrevocable divorce (*Talaq Ba'ain Bainoona Sughra*), where a divorcee may not remarry her ex-husband except by a new contract and dowry.

b. Major irrevocable divorce (*Talaq Ba'ain Bainoona Kubra*), which completes the third divorces, after such divorce; a divorcee may not remarry her ex-husband unless she marries another man and the lapse of her waiting period (*Iddah*) after being divorced by another man who had consummated the marriage with her under a valid marriage. She may not remarry her ex-husband except by a new contract and dowry.

#### **Article (88)**

1. According to the Sunni jurisprudence:

Every divorce shall be revocable (*Rajie*) except for the third-time divorce, a divorce prior to the consummation of marriage, dissolution of marriage (*Khul'*) with the payment of a consideration, separation on the ground of harm and whatever considered an irrevocable divorce (*Talaq Ba'ain*) in this law.

2. According to the Jaafari jurisprudence:

A divorce shall be irrevocable (*Ba'ain*), and the divorcee may not return to her ex-husband except by a new contract and dowry in the following cases:

- a. Prior to the consummation of marriage.
- b. She is menopausal.
- c. A young girl below the age of puberty.
- d. Dissolution of marriage (*Khul'*) and divorce by both husband and wife (*Mubara'h*) unless the divorcee changes her mind regarding the compensation she pays.
- e. A divorce that completes the three consecutive divorces; after such divorce, a divorcee may not remarry her ex-husband unless she marries another man and the lapse of her waiting period (*Iddah*) after being divorced by another man who had consummated the marriage with her under a valid marriage.

#### **Article (89)**

- a. A judge, before granting a divorce, shall attempt to reconcile the differences between spouses.
- b. A divorce by a husband shall be effected in front of a judge.
- c. A divorce occurring outside a court room shall be proved by admission or evidence.

#### **Article (90)**

The spouses may, at the time of proving the divorce, agree upon the determination of the divorced women alimony during her waiting period (*Iddah*) and their children's alimony, who shall have the right of custody, visiting of the child in custody in terms of the number of visits, time and place. All such things shall be recorded in the divorce document and the agreement shall be subject to expeditious enforcement by the force of law.

#### **Article (91)**

- a. A female custodian, who does not have an accommodation, shall be entitled to live with the child in custody in the former matrimonial home, until the father of the child in custody prepares a furnished, suitable and separate home for the residence of the female custodian and the child in custody during the full term of custody. If the home is dividable, the husband may divide it subject to Articles (65) and (67) of this Law.
- b. According to the Sunni jurisprudence, a female custodian, who has an accommodation or who opted to receive a rent instead of living with the child in custody, shall be entitled to a home rent at an amount determined by agreement or by a judicial discretion subject to Articles (47) and (63) of this Law.
- c. According to the Jaafari jurisprudence, a female custodian, who is not offered a custody accommodation, shall be entitled to a home rent in case she rents one, at an amount determined by agreement or by a judicial discretion subject to Articles (47) and (63) of this Law.

#### **Article (92)**

1. According to the Sunni jurisprudence,
  - a. A divorced woman, prior to the consummation of marriage, shall be entitled to half of the determined dowry. Otherwise, she shall be entitled to a compensation (*Muta'h*) at an amount equal to half of the dowry of an equivalent woman.
  - b. A divorced woman, after the consummation of marriage, shall be entitled to a compensation (*Muta'h*) if the divorce is made without any fault on her part. The compensation shall be equal to a one year alimony according to the financial ability of the divorcing husband, duration of the marriage and the circumstances of divorce.

2. According to the Jaafari jurisprudence, a divorced woman, prior to the consummation of marriage, shall be entitled to half of the determined dowry, and if dowry is not determined, she shall be entitled to a compensation (*Muta'h*) according to the financial ability of the divorcing husband.

#### **Article (93)**

A husband may return to his divorcee of a revocable divorce (*Talaq Rajie*) as long as she is in her waiting period (*Iddah*) and such right shall not be rescinded by the waiver thereof.

#### **Article (94)**

- a. The return of a wife may take effect by a word of mouth, in writing or by action with the intention to return to the wife during the waiting period (*Iddah*).
- b. The return shall be proven by two competent witnesses or by the attestation of the wife.
- c. The return shall be notarized by court, it does not require the permission of the wife, but she shall be informed thereof.
- d. If the spouses differed on the issue whether there has been a return or not after the lapse of the waiting period (*Iddah*), the word shall be of that who denied it, in case there is no evidence.

### **Chapter Three Dissolution of Marriage (*Mukhala'h*)**

#### **Article (95)**

Dissolution of marriage (*Khul'*) is a request by the wife to terminate a marriage contract against the payment of a consideration to the husband.

1. According to the Sunni jurisprudence:

- a. The spouses may mutually agree to terminate the marriage contract by dissolution of marriage (*Khul'*).
- b. An exception to the provisions of sub-paragraph (A) of paragraph (1) of this Article, if the husband refuses in a stubborn manner and they were feared to not obey the rules of Allah, the judge shall grant the dissolution of marriage (*Mukhala'h*) against the payment of an appropriate consideration not exceeding the amount of the dowry.
- c. Dissolution of marriage (*Khul'*) shall be for a compensation to be paid by the wife, provided that it shall be approximately the same amount of the dowry paid by the husband.
- d. Dissolution of marriage (*Khul'*) is considered as a rescission (*Faskh*) and is effected by the judge by uttering the word dissolution of marriage (*Khul'*) not divorce (*Talaq*).

2. According to the Jaafari jurisprudence:

- a. A wife is entitled to request the termination of the marriage contract by dissolution of marriage (*Khul'*) by payment of a consideration and the consent of the husband.
- b. Dissolution of marriage (*Khul'*) must be the result of hatred between the spouses; especially on the part of the wife.
- c. Whatever is valid for dowry is valid for the consideration; it should be determined and specified. If the hatred was on the part of both spouses, the husband may not request a consideration that exceeds the dowry.
- d. Dissolution of marriage (*Khul'*) is deemed an irrevocable divorce (*Talaq Ba'ain*) and takes place by uttering the word of dissolution of marriage (*Khul'*) or the word of divorce (*Talaq*).

e. If a wife changes her mind regarding the payment of consideration during her waiting period (*Iddah*), the divorce shall be deemed a revocable divorce (*Talaq Rajie*).

#### **Article (96)**

For a husband to be entitled to the payment of a consideration for the dissolution of marriage (*Khul'*); the dissolution of marriage (*Khul'*) by the wife shall be by her own will without duress or pressure, and if the consideration is stated in the dissolution of marriage (*Mukhala'h*), whatever is stated only shall be paid.

1. According to the Sunni jurisprudence:

a. The relinquishing of custody of the children or any of their rights may not be used as a consideration for the dissolution of marriage (*Khul'*) and if used as such, the dissolution of marriage (*Khul'*) shall be valid but the condition is null and void. In such a case, the female custodian shall have the right to keep them and their father must pay for their alimony.

b. In case of the nullification of a condition in the dissolution of marriage (*Mukhala'h*), the judge shall estimate a suitable compensation subject to the provisions of sub-paragraph (c) of paragraph (1) of Article (95) of this Law.

c. If the consideration is not stated in the dissolution of marriage (*Mukhala'h*), the judge shall estimate a compensation in accordance with the provisions of sub-paragraph (b) of paragraph (1) of this Article.

2. According to the Jaafari jurisprudence, the relinquishing of custody of the children in a manner detrimental to them, or waiving any of their rights, may not be used as a consideration for the dissolution of marriage (*Khul'*)

### **Chapter Four Divorcement (*Tatleeq*)**

#### **Sub-Chapter One Divorcement (*Tatleeq*) Due to Illness**

#### **Article (97)**

According to the Sunni jurisprudence:

a. Either spouse may request a divorcement (*Tatleeq*) on the ground of illness of the other spouse that makes the continuation of marital life impossible, and for which there is no cure or the expectation thereof but only after more than one year, regardless whether such illness is mental or physical and affected one of them prior to or after the marriage contract without the knowledge of the other spouse.

b. If there is the expectation of a cure to the illness before the lapse of one year, the court shall give the sick spouse a grace period of one year before effecting the divorcement.

c. If a wife married her husband knowing of his illness, or the illness occurred after the contract and she accepted his condition, she shall have the right to request a dissolution of marriage (*Mukhala'h*) subject to the provisions of Articles (95) and (96) of this Law.

d. The assistance of certified experienced medical experts shall be sought to diagnose the illnesses and estimate the extent thereof.

#### **Sub-Chapter Two Divorcement (*Tatleeq*) Due to Harm or Quarrelling**

#### **Article (98)**

- a. The wife shall have the right to request a divorcement (*Tatleeq*) for reason of harm which makes the continuation of marital life impossible.
- b. The wife shall have the right to request a divorcement (*Tatleeq*) if her husband abandoned her completely, leaving her neither married nor divorced without a reason.
- c. The judge must exert every efforts possible to reconcile the differences between the spouses.
- d. If the judge fails to reconcile the differences and harm has been proved, he shall grant the divorcement (*Tatleeq*).

#### **Article (99)**

If harm is not proved but quarrelling between the spouses continues and the reconciliation failed, the judge shall appoint two arbitrators from the relatives of the spouses if possible, or otherwise mediators who are capable to reconcile or experts, without prejudice to the provision of Article (89) of this Law.

#### **Article (100)**

- a. The two arbitrators shall look into the causes of the quarreling and exert every effort to reconcile the differences between the spouses.
- b. The two arbitrators shall, within no later than three months from the date of their appointment, submit a report to the judge detailing their endeavors and suggestions, including the extent of harm caused by each spouse or as to what extent each spouse has harmed the other.
- c. A judge may extend the period referred to in the preceding paragraph upon the joint request of both arbitrators or in realization of a perceived interest.

#### **Article (101)**

A Judge may accept the report of the two arbitrators or appoint other experts specialized in psychological and social matters by a substantiated decision to try arbitrating again, in accordance with the procedures mentioned in the preceding two Articles.

#### **Article (102)**

If the two arbitrators differed between themselves, the judge shall replace them or appoint a specialized third arbitrator who shall have a casting vote.

#### **Article (103)**

If reconciliation was not possible and quarrelling continued between the spouses, a judge may rule to divorce them (*Tatleeq*) based on the report of the two arbitrators. According to the Jaafari jurisprudence, the arbitrators must be authorized by the husband to divorce and the wife shall offer compensation.

#### **Article (104)**

According to the Sunni jurisprudence, if a judge grants a divorcement (*Tatleeq*) in accordance with the provisions of Article (103) of this Law, he shall specify the compensation given by the wife to the husband in terms of dowry and other things, if all the harm or most of it, is caused by the wife. If all the harm or most of it is caused by the husband, the wife shall have the right to keep the dowry.

#### **Article (105)**

According to the Sunni jurisprudence, if a wife requests dissolution of marriage (*Khul'*) prior to the actual consummation of marriage and she deposits whatever dowry she received and all expenses spent by the husband for the purpose of marriage, and the husband refused to effect the dissolution of marriage (*Khul'*) and the judge failed to achieve reconciliation, the judge shall decree a dissolution of marriage (*Mukhala'h*).

### **Sub-Chapter Three Divorcement (*Tatleeq*) for not Providing Alimony**

#### **Article (106)**

1. According to the Sunni jurisprudence:

a. If a present husband refrains from providing alimony to his wife and he has no ostensible assets and was not proved to be insolvent, the judge shall compel him to provide alimony. If he refrains to do so, his wife shall have the right to apply for divorcement (*Tatleeq*) and the judge shall grant their divorce. The husband may avoid divorce by paying the necessary alimony.

b. If a husband proves his insolvency, or if he is absent in a known place or in prison and he has no ostensible assets, the judge shall grant him a period of not less than one month and not more than three months to pay the said alimony, and if he fails to do so, the judge shall grant their divorce.

c. If the husband is absent in an unknown place, and he has no ostensible assets, the judge shall grant their divorce immediately, subject to the provisions of paragraph (1) of Article (108) of this Law.

A divorce, in accordance with the preceding paragraphs of this Article, shall be deemed a revocable divorce (*Talaq Rajie*) if it was not a third-time divorce.

2 According to the Jaafari jurisprudence, if a present husband refrains from providing alimony to his wife and he has no ostensible assets which could be paid for her alimony, the judge shall compel him to provide such alimony. If he refrains to do so, his wife shall have the right to apply for divorcement (*Tatleeq*) and the judge shall divorce them. The husband may avoid divorcement (*Tatleeq*) by paying the necessary alimony.

### **Sub-Chapter Four Divorcement (*Tatleeq*) Due to Absence and Going Missing**

#### **Article (107)**

A wife may request a divorcement (*Tatleeq*) due to harm resulting from the absence of her husband, whose home or place of residence is known, without an excuse even if he has money from which alimony may be paid. She shall not be awarded a divorce judgment except after giving a notice to the husband that he shall either reside with his wife, move her to him or divorce her.

#### **Article (108)**

1. According to the Sunni jurisprudence, the wife of a missing or absent person, who is not known whether he is dead or alive, nor his country or place of residence, may request a divorcement (*Tatleeq*), and this shall not be awarded except after conducting a search, investigation and the lapse of four years of being missing or absent.

2. According to the Jaafari Jurisprudence:

- a. The wife of a missing or absent person, who is not known whether he is dead or alive, nor his country or place of residence, may request a divorcement (*Tatleeq*), and this shall not be awarded except after referring her request to a judge and the lapse of four years of search and investigation.
- b. The wife shall not be divorced if the missing or absent husband has assets or a guardian to provide her with the alimony.

#### **Article (109)**

- a. A missing husband who is most likely to be perish is adjudged to be presumed dead, if there are evidences to indicate that he is no longer alive and reassures his death.
- b. If a missing husband is adjudged to be presumed dead, his wife shall go into a death waiting period (*Iddah*) from the date of the issuance of the final judgment.

#### **Article (110)**

According to the Sunni jurisprudence, if a missing husband comes back or is found to be alive; his wife shall be his, unless she was consummated by the second husband, if the latter did not know that the former was alive.

According to the Jaafari jurisprudence, if a missing husband comes back or is found to be alive, he shall be more entitled to his wife, unless she finished the waiting period (*Iddah*). If her waiting period (*Iddah*) ends, she shall no longer be his wife.

### **Sub-Chapter Five Divorcement (*Tatleeq*) Due to Imprisonment and Consumption of Alcohol or the Use of Drugs**

#### **Article (111)**

If a husband is imprisoned in enforcement of a final judgment with a freedom restricting penalty, his wife may request a divorcement (*Tatleeq*) if she is harmed.

#### **Article (112)**

A wife may request a divorcement (*Tatleeq*) if her husband consumes alcohol or uses drugs after being examined by an official medical committee.

### **Sub-Chapter Six Common Provisions**

#### **Article (113)**

According to the Sunni jurisprudence, a divorcement (*Tatleeq*) taking effect in accordance with the provisions of Articles (97), (98), (103), (104), (107), (108) and (111) of this Law shall be an irrevocable divorcement (*Tatleeq Ba'ain*).

According to the Jaafari jurisprudence, a divorcement (*Tatleeq*) taking effect in accordance with provision of paragraph (2) of Article (88) shall be an irrevocable divorcement (*Tatleeq Ba'ain*).

#### **Article (114)**

While hearing the divorcement (*Tatleeq*) case, the judge may decide to take temporary measures to ensure payment of alimony to the wife and children, and all matters related to their custody and visits.



## **Chapter Five Rescission (*Faskh*)**

### **Article (115)**

- a. A marriage contract shall be rescinded (*Faskh*) if something arises which makes it unlawful to continue according to Sharia.
- b. Separation by oath (*Li'an*) is deemed a rescission (*Faskh*).

### **Article (116)**

- a. A deceived spouse may request the rescission (*Faskh*) of the contract because of the deception.
- b. A request for rescission (*Faskh*) shall be rescinded if there is evidence that the deceived spouse knew of the deception and has accepted it expressly or implicitly.

## **Chapter Six Effects of Separation of Spouses**

### **Sub-Chapter One The Waiting Period (*Iddah*)**

#### **Article (117)**

- a. The waiting period (*Iddah*) is a duration, during which a wife must wait without marriage after separation or the death of the husband.
- b. The waiting period (*Iddah*) begins from the date of the separation or the husband's death. In accordance with the Jaafari jurisprudence, from the time the wife receives the news of death.
- c. In case of intercourse with a woman under the belief that she is his wife (*Shubha*), the waiting period (*Iddah*) begins from the last intercourse.
- d. In case of a divorcement (*Tatleeq*) by a judge, the waiting period (*Iddah*) begins from the date of divorce if the judgment became final.

#### **Section One Death Waiting Period (*Iddah*)**

##### **Article (118)**

- a. The wife of a deceased husband of a valid marriage, even before consummation of marriage, will go into a waiting period (*Iddah*) for a period of four months and ten days, unless she is pregnant.
- b. The waiting period (*Iddah*) of a pregnant wife of a deceased husband shall end by giving birth, and according to the Jaafari jurisprudence, by the farthest of either terms of giving birth or the end of the waiting period (*Iddah*).
- c. A women, in a consummated invalid marriage, shall go into a divorce waiting period (*Iddah*) if the man dies, for ensuring that she is not pregnant.

#### **Section Two Divorce and Separation Waiting Period (*Iddah*)**

##### **Article (119)**

- a. There shall be no waiting period (*Iddah*) for a divorced woman before the consummation of marriage.
- b. The waiting period (*Iddah*) of a pregnant woman shall end upon giving birth.
- c. The wife of a missing husband shall go into a death waiting period (*Iddah*), subject to provisions of Article (108) of this Law.
- d. Waiting period (*Iddah*) for a non-pregnant woman:
  - (1 According to the Sunni jurisprudence:
    - a. Three complete menstrual cycles for those who can have menstruation, not including the menstrual cycle during which the divorce took place.
    - b. Three lunar months for those who do not menstruate or are in menopause.
    - c. The least term of three menstrual cycles or one year for the unsure woman, whose menstruating stopped before the age of menopause.
  - (2 According to the Jaafari jurisprudence:
    - a. Three cleansings for those who can have menstruation cycles, ending with seeing the blood of the third menstruation cycle.
    - b. No waiting period (*Iddah*) for a young girl below the age of puberty or who is menopausal.
    - c. Three months for a woman who stopped menstruating but still at the age of menstruation.

#### **Article (120)**

In all cases, the waiting period (*Iddah*) shall not exceed one year.

#### **Article (121)**

If a husband dies while the woman is in a waiting period (*Iddah*) for a revocable divorce (*Talaq Rajie*), she shall enter into a death waiting period (*Iddah*) without counting the past waiting period (*Iddah*) that she has been through.

#### **Article (122)**

If a husband dies while the wife is in an irrevocable divorce (*Talaq Ba'ain*) waiting period (*Iddah*), then she shall complete it without going into a death waiting period (*Iddah*). According to the Sunni jurisprudence, there shall be excluded from this provision, the divorce that takes place during a death illness and the purpose of which is to deprive the woman of the inheritance, and in this case the woman shall go into a waiting period (*Iddah*) for the later of the two terms.

### **Sub-Chapter Two Custody**

#### **Article (123)**

Custody is to keep, raise and take care of a child without prejudice to the guardian's right of personal guardianship.

#### **Article (124)**

According to the Sunni jurisprudence, a women's custody ends when males turn fifteen years old. For females, custody ends upon marriage and consummation by the husband.

According to the Jaafari jurisprudence, a mother's custody ends when the son or daughter turn seven years old, after which custody shall be transferred to the father.

#### **Article (125)**

1. According to the Sunni jurisprudence, if a male reaches fifteen years of age, or a female reaches seventeen years of age and has not got married and the marriage was not consummated, both of them shall have the right to join either of their parents or those who have the right to custody, as they may wish. If either of them choose to stay with their female custodian, they shall continue with her without a custody wage, subject to provisions of Article (136) of this Law.
2. According to the Jaafari jurisprudence, the option of joining either parent shall be given to a female upon completing the age of nine and the male upon completing the age of fifteen, provided that they are sane.

#### **Article (126)**

The custodian must meet the following conditions:

- a. Must be a Muslim.
- b. Sane.
- c. Adult.
- d. Can be trusted with the child in custody.
- e. To be able to raise, keep, take care of and look after the interests of the child in custody.
- f. To be free from communicable and dangerous diseases.

#### **Article (127)**

Subject to the conditions stipulated in Article (126) of this Law, a custodian shall also meet the following conditions:

1. According to the Sunni jurisprudence:
  - a. If the Custodian is a woman: she shall not be married to a stranger to the child in custody unless the court decides otherwise for the interest of the child.
  - b. If the custodian is a man:
    - 1) He shall have with him a woman who is capable of taking custody of the child.
    - 2) He shall be unmarriageable to the child in custody, if the child is a female.
2. According to the Jaafari jurisprudence, a mother's right to custody shall be rescinded if she marries another man, unless a court decides otherwise.

#### **Article (128)**

Custody is a joint duty of both parents together as long as they remain married. In case of separation, the custody shall be:

1. According to the Sunni jurisprudence: for the mother, then the mother's mother no matter how high in lineage, then to the father's mother, then the father. In addition, custody shall be for the sister of the child in custody, then to the maternal aunt, then to the paternal grandmother, then to the daughter of the brother, then to the daughter of the sister, unless a judge decides otherwise for the benefit of the child in custody. In all cases, a true sibling shall have priority followed by a maternal sibling then the paternal sibling.
2. According to the Jaafari jurisprudence: for the mother and then the father. If the father dies or is rescinded from custody, it shall return to the mother, then to the paternal grandfather, then to the custodian (*Wasi*) from the father's side, if any, and then to the relatives of the child in custody according to the inheritance order.

#### **Article (129)**

If the parents are not present and the custody is not accepted by any of those who are entitled to it, a judge shall choose a person whom he deems fit from among the relatives of the child in custody, and then from others, or an institution qualified for this purpose.

**Article (130)**

A judge may seek the assistance of specialists and experts in psychological and social matters when determining the custody to serve the best interest of the children, without prejudice to the provisions of the preceding articles.

**Article (131)**

The judgment of custody shall entail that the custodian shall have all of the identity papers of the child in custody, and such judgment shall be covered by an expeditious enforcement.

**Article (132)**

- a. If the mother leaves the matrimonial home for a dispute or other reasons, she shall not lose her right to custody unless the judge decides otherwise for valid reasons.
- b. If the child in custody is too young to be separated from his mother, she shall be obligated to take his custody, unless the judge decides otherwise.

**Article (133)**

The father or the other guardians shall look after the affairs, discipline, guidance and education of the child in custody, and shall ensure that the child in custody spends the night in the custodian home only, unless a judge decides otherwise.

**Article (134)**

- a. A female custodian may not reside with the child in custody in another country except by permission of his guardian or custodian (*Wasi*).
- b. A guardian, whether a father or another person, may not travel with a child in custody for permanent residence outside the country, except with the permission of his female custodian.

**Article (135)**

A person, entitled to take custody of a child, shall have the right to reside in the country for the duration of the custody if the child in custody is a Bahraini citizen, unless there is a judgment to expel the custodian from the country.

**Article (136)**

The right of custody shall be rescinded in the following cases:

- a. If any of the conditions mentioned in Articles (126) and (127) of this Law is not fulfilled.
- b. If the custodian settles in a country where it is difficult for the guardian of the child in custody to perform his duties, without prejudice to Article (134) of this law.

According to the Sunni jurisprudence:

- a. If a person entitled to the custody fails to claim it for a period of one year, unless the judge determines otherwise.
- b. If the new female custodian lives with a women whose custody has been rescinded for a reason other than physical disability, unless the person entitled to the custody accepts this explicitly or implicitly.

#### **Article (137)**

The custody shall return to those who lost it if the cause of custody dismissal ceases to exist.

#### **Article (138)**

- a. If a child is in the custody of one of the parents, the other parent shall have the right to visit, receive and accompany him as may be decided by a judge.
- b. If one of the parents of the child in custody is deceased or absent, the unmarriageable relatives of the child in custody shall have the right to visit, receive and accompany him as may be decided by a judge.
- c. If a child in custody is staying with a person other than his or her parents, the judge shall determine the person entitled to visit him or her from amongst his or her unmarriageable relatives.

#### **Article (139)**

- a. If a visit cannot be organized by agreement, it shall be arranged by the judge, provided that it shall take place at a time and place that does not cause psychological harm to the child. The same procedure shall apply to the enforcement of the custody judgment.
- b. A visitation judgment shall not be enforced coercively; and if a person responsible for a child refuses to comply with the judgment without an excuse, the judge shall warn him or her. If this act is repeated again, the execution judge, at the request of the person entitled to the visit, may refer the file to the Trial court matter to decide expeditiously what it deems appropriate for the child in custody and such judgment shall be covered by an expeditious enforcement.
- c. A custody judgment shall not be enforced by coercively unless a judge determines otherwise.

### **Chapter Seven Final Provisions**

#### **Article (140)**

- a. According to the Sunni jurisprudence, a women's testimony shall be accepted as evidence in cases of marriage, divorce, harm, custody and other matters which women are usually familiar with.  
According to the Jaafari jurisprudence, women's testimony shall be accepted as evidence in cases of harm, custody and other matters which women are usually familiar with.
- b. The testimony of a relative or a related person to the person being testified for, shall be accepted if he is eligible to give testimony.
- c. Evidence of harm may be deduced from evidence that infers the knowledge of the evidence.

#### **Article (141)**

- a. If the spouses have a dispute over furniture and fixtures of the matrimonial home and neither of them have supporting evidence, the judge shall decide as follows:
  1. Items that are usually used by men, but not for women, shall be given to the husband, under his oath.
  2. Items that are usually used by women, but not for men, shall be given to the wife, under her oath.
  3. Items that can be used by both spouses and neither of them has evidence to support their claim, shall be divided between them under oath.

b. This provision shall apply in case of dispute between a spouse and the heirs of the other spouse or between the heirs of the two spouses.