

## Divorcing the Wife Herself in the Iraqi Personal Status Law No. 188 of 1959 and the Imami Doctrine

Professor Dr. Akram Yaghi, Doctorate in private law. Lebanese University.<sup>1</sup>

Karrar Mohammed Fadhil<sup>2</sup>

akramyghi44@gmail.com<sup>1</sup> alasdekaraalasde@gmail.com<sup>2</sup>

DOI: [10.56201/jlgp.v9.no2.2024.pg1.13](https://doi.org/10.56201/jlgp.v9.no2.2024.pg1.13)

---

### **Abstract**

*The husband has the right to divorce his wife as long as he is qualified to effect the divorce, and it is natural that whoever has a right has the right to delegate it. The husband may delegate to his wife the divorce herself, so this is called delegation. Delegation can either be an agency or a mandate. Power of attorney is what authorizes others to do certain actions, and power of attorney is that the husband has the right to divorce his wife. We found that the Iraqi legislator in Personal Status Law No. 188 of 1959 In Article 34, two matters are mentioned in which the wife can lift the marital bond: power of attorney and delegation. Since the subject of our research is compared with the Imami jurisprudence, we find that they differed in the two matters, as some of them hold that power of attorney is permissible in the present and absent, and there are those who say in the absent rather than the present. The same applies to authorization of whether or not to impose a ruling. We reached a conclusion in which we stated the most important results and recommendations derived from this research.*

**Key words:** Divorce, Agency, Authorization, Front, Law

---

### **Introduction**

The basic principle in divorce is that it is in the hands of the man, but an exception can be made in the hands of the woman, and that is with the authorization of the husband at the time of establishing the marriage contract or after it. Muslim jurists have permitted this right for the wife as a condition associated with the marriage contract, as it is one of the valid conditions that does not conflict with the requirements of the contract, and the husband has no right to withdraw from it. This authorization is if the wife accepts the husband's authorization of her ownership or choice and signs her divorce and chooses herself. However, if the husband authorizes his wife or someone else to divorce her, it is permissible for him to withdraw his authorization before the agency is implemented or the third party's right to her is attached. However, this does not prevent the husband from his right to impose Divorce himself before the wife signs the divorce herself.

### **First: the importance of research**

The topic of research on divorcing the wife herself was chosen because of its privacy and importance and its close relationship that links marriage to divorce and affects it, which falls within

the woman's right to stipulate whatever legal conditions she wants included in her marriage contract, such as divorcing herself.

### **Second: The research problem**

The husband has the right to lift the marriage certificate, and this is confirmed by the noble hadith: "Divorce is in the hands of the one who takes the leg." Infallibility is in the hands of the husband, and it is the principle approved by the Holy Law. But does the wife have the right to divorce herself? That is, does she have the right to lift the marriage restriction? Which was the reason I chose this topic. Therefore, it was necessary to research this topic and propose legal texts in a way that suits the reality of life at the present time and to address the problems that may arise as a result of the development of life and the change in the idea of the marital relationship, especially for women at the present time.

### **Third: Research methodology**

Studying this topic required following the comparative approach between Imami jurisprudence and the Iraqi Personal Status Law No. 188 of 1959.

### **Fourth: Research plan**

The issue of divorcing one's own wife will be addressed in the Iraqi Personal Status Law No. 188 of 1959 and the Imami doctrine.

Within the following research plan:

The first topic

The concept of agency contract.

The first requirement

Definition of an agency contract.

The second requirement

The legality of power of attorney for divorce according to the Imamis and the law:

The second topic

Authorization in divorce

First requirement:

Authorization in Imami jurisprudence:

The second requirement:

Delegation in law.

The first topic

The concept of agency contract.

Agency has several definitions, including the linguistic and terminological definition, which was defined by Imami jurisprudence and Iraqi law, so we will clarify in this section the definition of the agency contract in the first requirement, as for its legitimacy in the second requirement.

First requirement:

Definition of an agency contract.

We will explain the meaning of agency in terms of the linguistic, terminological, and legal concept.

First: Linguistic definition:

Agency and agency (1), with the opening of the waw and its kasra, are given to multiple meanings, including: a noun in the infinitive meaning of agency, which is to show incapacity, and to rely on others, and the noun taklan, and he relied on so-and-so in his matter if he relied on him (2). It may come in the sense of sponsorship: as it is said: (The agent in the names of God - the Most High - is the one who establishes and guarantees the provision of the servants), and his reality is that he is independent in the command of the one entrusted to him, and it also came: And the agent also: meaning the surety and the sufficient, and with it the Almighty's saying was explained: (And We gave Moses the Scripture And We made it a guidance for the Children of Israel that you should not take a representative besides Me. () And it came in the noble hadith: (Whoever entrusts to Me what is between his two jaws and what is between his feet, I trust for him in Paradise) (3), meaning: "He guarantees and guarantees" (4).

As for the language, it means doing the work of someone else, and he is one who seeks to do the work of someone else and acts on his behalf, meaning: "A man's agent: the one who carries out his orders, he is called an agent because his client has entrusted him with carrying out his orders, so he is entrusted with the matter (5), and from it is the Almighty's saying (Lord of the East and the West There is no god but Him, so take Him as a disposer of affairs (6).

It comes in the sense of preservation: agent: preserver, and from it is the Almighty's saying: (That is Allah, your Lord; there is no god but Him, the Creator of all things, so worship Him, and He is a disposer of affairs over all things) (7) i.e. a protector, and it comes in the sense of trust and delegation (8): and every so-and-so has a mandate: the sufficiency of his command Trust in Him And in the matter, and accordingly: He delegated it to Him, and from it is the Almighty's saying: (So they said in God, "We put our trust. Our Lord, do not make us a trial for the wrongdoing people"), meaning in Him we trust, and in Him we entrust our matter.

Second: Agency in terminology:

The Imami jurists have defined the agency contract with several definitions, as we find some of them agreeing on the wording and concept, and some of them go with a comprehensive and precise definition of the agency contract. He defined T as (an expression of offer and acceptance indicating authorization to act)(9). The author of the book Al-Lam'a Al-Dimashqiyya defined it as "representation in action" (10). By examining the previous two definitions, we find that agency is

a contract according to which a person delegates another person to carry out a certain action, and agency in this sense is based on There are two basic pillars that can only be upright: Because delegation requires a representative and a representative, and they are two pillars of agency, i.e. the principal and the agent, and the word (disposal) refers to the person in charge of it.

However, it is criticized that these two definitions do not prevent the entry of a will, as they do not restrict the disposition of the client's life, and they are also criticized for not specifically specifying the client in it. This is to take disposition free of any restriction, and it includes correct and corrupt disposition, known and unknown disposition, representative disposition, and others (11).

As for some of them, they defined agency as: (a contract that aims to authorize someone else to dispose of what he has the right to dispose of. If it is during life only, then it is agency, and if it is after death, then it is guardianship) (12). Some contemporary jurists go to this meaning and define agency as: (a person authorizing someone else to do a transaction, such as a contract or contract, or any of their affairs, such as payment or receipt, such as appointing a person to sell his house, or collect the price for him) (13).

By delving deeper into these last two definitions, we notice that they have captured the meaning of agency. What is meant by the phrase "giving power to a person" and the phrase "disposing of his property" means the principal, and the phrase "giving power to others" and the word "other" means the agent, and they are two of the pillars of agency, in addition to the principal who is in charge of it. The words "disposition" and "transaction" refer to it, and it is the third pillar of agency. It is also noted that the two definitions do not confuse agency and delegation, as apart from agency is a power granted to the agent by the principal under a contract, which is the agency contract, as agency in reality is neither a delegation nor a permission to act, even if they frequently meet with the agency or other contracts and are similar or participate with it. In the traces, except that the fruit of the difference appears in other traces, the essence of agency is giving authority to others, and this authority is not coercive on him, but rather it is his if he accepts it by choice, and his acceptance of this does not require that it be in a specific word, and the wording is not required at all, and it is sufficient. The act, rather, everything that is indicated by it is sufficient (14), and he also defined it as "a mandate to dispose of a matter during his lifetime" (15). With this definition, we find that he excluded the deposit with a record of disposal, since the deposit is based on preservation, and with a restriction in the state of his life to the will. .

Third: Agency in law:

It is not the task of legislation to set definitions, as that is within the jurisdiction of jurisprudence and the judiciary. It is not one of the tasks of the legislator and is not required by the interest of legislation, because there is great difficulty in setting a comprehensive definition that covers all cases. However, the legislator sometimes intervenes in setting a definition for some contracts to remove ambiguity in the matter. Interpreting some matters, including the agency contract.

The Iraqi legislator has defined agency in Article (927) of the Iraqi Civil Law No. 40 of 1951 in force by saying: (a contract by which another person performs in his place for himself in a known permissible act). It is noted that the Iraqi legislator has defined the agency as a contract, regardless

of what this contract entails in terms of the agent's obligation to carry out the legal action, because the agent's obligation is after the conclusion of the contract that is concluded by his acceptance, so the intention was to define the agency as a contract, not with its consequences. antiquities( 16).

The second requirement:

The legality of power of attorney for divorce according to the Imamis and the law:

First: Its legitimacy according to the Imamis:

The legitimacy of entrusting oneself with divorce according to the Imamiyyah is not agreed upon, as they differed over the well-known two opinions (17): The first opinion: What is well-known (17) among the early and late ones, which is that it is not considered, and the permissibility of proxy in it for the absent and the present.

As for the second opinion: It is narrated on the authority of Sheikh al-Tusi (18 ) and my sons Al-Baraj (18 ) and Hamza (20 ), which is the separation between the present and the absent, so it is permissible to delegate the absent person to the exclusion of the present.

It bears witness to the first: in addition to the generalization of evidence of agency (21) in what the legislator has no purpose in considering directing it, such as contracts and settlements - which include divorce - and a number of texts. As Sahih Saeed Al-Araj on the authority of Imam Al-Sadiq (peace be upon him) said to him about a man giving the affairs of his wife to a man, so he said: Bear witness that I have transferred the affairs of so-and-so to so-and-so, so he divorces her. Is that permissible? He (22) said: (Yes)(23), and it is authentic by Ibn Miskan on the authority of Abu Hilal al-Razi, who said: I said to Abu Abdullah (24): A man and every man divorces his wife when she menstruates and becomes pure, and the man goes out, so it appears to him, so I bear witness that he has annulled what was done. He commanded him to do so, and that he had made it clear to him, he (25) said: (Let his family know and let the agent know) (26).

And what Al-Sakuni (27) said about him: The Commander of the Faithful (28) said: Concerning a man who put the divorce of his wife in the hands of two men, so he divorced one of them and the other refused, but the Commander of the Faithful (29) refused to permit that, until they all came together to divorce . And something similar to that which has been heard about (30).

And Sahih Muhammad bin Isa Al-Yaqtini said: He sent packages of clothes to Abu Al-Hasan (peace be upon him) - until he said: He ordered three hundred dinars to be paid to Rakhim, a wife who was his, and he ordered me to divorce her from him, and to provide her with this money, and he ordered me to bear witness to her divorce, Safwan bin Yahya and another. Muhammad bin Issa forgot his name (31), and what entails leaving out elaboration on a number of these texts is that there is no difference between the present and the absent, and what is specific to the absent is incomprehensible, so that the rest of the texts can be restricted to it.

The second opinion was inferred by the necessity of combining these texts with the report of Zurara on the authority of Imam al-Sadiq (32): "It is not permissible to delegate power in divorce" (33) by applying these texts to the absent person and this to the present one and by the appearance of texts restricting the correct divorce to the man's statement to his wife before the waiting period

after What appears from her menstruation before he has intercourse with her: You are divorced (34). Considering that it is a matter of the observable definition market, restricting everything that is mentioned in it, then from that direct and false it is known that it is not considered in the absent.

But the first is rejected: in addition to the weakness of the chain of transmission of Zurara's report, and the symptoms of what is well-known about it, that the plural of the Mazbur () is voluntary and there is no witness to it, and also what is in Al-Wasa'il of the possibility of carrying Zurara's report on denial without informing, and on the agent's lack of knowledge of the wife's purity, and on its impermissibility merely The whole claim is contrary to what appears to be the case. If it is possible to combine it with those texts by making it objectionable, otherwise it must be dismissed, due to the preponderance of those texts in ways that are not hidden.

He responds to the second: The texts referred to in this context explain the inadmissibility of a metaphor such as: You are a cell and its likeness. Therefore, it is no longer definitive in the form of the discourse, even though if the concept of it is proven, it is absolute and restricted by what was mentioned above.

Power of attorney in divorce is of great importance in removing embarrassment from people, especially in the event of the husband's absence and there is a legal justification for divorcing his wife while he is absent, so power of attorney in divorce is the solution, so we go with the saying that is closest to removing embarrassment from people, and what we seek in reality, and what we observe. In Iraqi courts, especially in such cases of the absence of the husband or both, which causes harm to them, so power of attorney is a must. It is possible to say what the majority said, and the well-known saying of the Imamiyyah.

Second: The position of personal status laws on power of attorney for divorce.

Before the issuance of the Fifth Amendment Law No. (156) of 1980 AD amending the Personal Status Law No. (188) of 1959 AD, it was permissible to grant power of attorney for divorce, and on this basis, the Iraqi judiciary proceeded at that time, and at the top of its hierarchy was the Federal Court of Cassation, which issued decisions. In this regard, the Court of Cassation decided in its decisions to the following: (an agent does not have the right to divorce his client's wife unless he is expressly authorized to do so)(35), and in a decision of the Federal Court of Cassation, it stated (Sharia and legal provisions require That if the client dismisses his agent, he remains on his agency until the news of the dismissal reaches him, and based on this, the Khula divorce performed by the agent before he knew of the dismissal is valid. The agent's agency included the following: (And whenever you remove him, he My agent until the divorce transaction is completed in its final form (36). Therefore, the client does not have the right to dismiss him, because whenever he dismisses him, his agency is extended, because the agency depends on the correct condition, and he can be removed by the client saying to his agent, "You have withdrawn from the suspended agency and I have removed you from the completed agency." This opinion of the Court of Cassation was Before the issuance of the Fifth Amendment Law No. (156) of 1980 AD amending the Personal Status Law No. (188) of 1959 AD, according to which Article (34) of the aforementioned law was amended, so that it now stipulates: (A- Divorce, lifting the marriage restriction upon the infliction of the husband or The wife, if she is authorized by him or she is

authorized by him or by the judge, and the divorce shall not take place except in the form specified for it by the Sharia. B - Agency shall not be taken into account in the procedures of social research and arbitration and in issuing the divorce. While the text of Article (34) of the aforementioned law - before it was amended - stipulated (divorce, lifting the marriage restriction from the husband or his representative... etc.).

In any case, after the issuance of the above-mentioned amendment, the Iraqi legislator did not adopt any of the four schools of thought, nor the Imami school of thought, but rather adopted the Zahiri school of thought on the issue of the impermissibility of power of attorney, and this is what blames the Iraqi legislator, for not adopting the school of thought of the majority of Iraqis, whether they are of the people of Iraq. The Sunnis who follow the doctrine of Abu Hanifa, or the doctrine of the Imami, but the Iraqi legislator found an exception for the wife, so she gave the husband the right to authorize or authorize her to divorce herself if she so wished, and therefore we go with what was stated in the Personal Status Law of the United Arab Emirates regarding the explicit mention of agency. In divorce, this is consistent with the reality we are in of the absence of the husband, or one of them travels and will not be able to attend.

The second topic

Authorization in divorce

In this section, we explain the position of the Imami jurists regarding the husband's authorization to his wife, in addition to the Iraqi legislator's position, in two demands.

First requirement:

Authorization in Imami jurisprudence:

It is the husband giving his wife the right to divorce herself from him, as if he is giving her the choice between keeping the wife or breaking her and removing her by initiating the divorce herself.

What is well known is that choosing herself with the intention of divorce after he has given her his choice has no ruling, because marriage is an infallibility learned from the law and is not removed except by what has been proven to be removed. There is no evidence here that the choice is removed from the narrations: among them: documented by Al-Ais bin Al-Qasim on the authority of Abu Abdullah (37). "On the authority of a man who chose his wife, but she chose herself and abandoned him?" He (PBUH) said: "No, this is something that was specifically for the Messenger of God. He commanded that and he did it. And if they had chosen for themselves, he would have divorced them. This is the saying of God Almighty: "Say to your wives, 'If you see the life of this world and its adornments, then come.'" I will give you pleasure and a pleasant release... This is what Al-Tarhini Al-Amili mentioned in his book Zabada (38).

The author of the laws said: "And if he gives her the choice and intends to divorce, then if she chooses him or remains silent, even for a moment, then there is no ruling on him, and if she chooses herself immediately, it is said: the separation is irrevocable, and it is said: his revocability is reduced, and it is said: there is no ruling on him, and it is more for him (39).

Among those who said that divorce by delegation is invalid is Ibn al-Baraj, and Ibn Idris. Yes, Ibn Abi Aqeel and Sayyid al-Murtada believed that divorce was valid. For some news, including: If she chooses herself, she is irrevocably divorced, and he is a suitor from Al-Khattab, and if she chooses her husband, then nothing (40). This is what was narrated on the authority of one of the truthful people, peace be upon them.

Sheikh Al-Tusi, in his book Al-Tahtheeb, interpreted these narrations as taqiyyah, because they agree with the doctrine of the common people, and Al-Allamah Al-Hilli said that the narrations indicate that divorce is obtained by the husband after she chooses herself and reveals her desire to end the marital relationship. As for contemporary jurists, they are fascinated by the non-occurrence of divorce by authorization. Sayyed Mohsen al-Hakim, Sayyed Muhammad Baqir al-Sadr, Sayyed al-Khoei, Sayyed al-Sistani, Sayyed Muhammad Sadiq al-Rawhani, Sheikh Wahid al-Khorasani, Sayyed al-Sadr al-Thani, and Sayyid Kamal al-Haidari... said. Al-Sayyid Al-Khoei: "If he gave his wife the choice and intended to delegate the divorce to her, and she chose herself with the intention of divorce, it is said that it would be revocable."

It was said: No, and it is the strongest: (41 ) That is, the strongest is that it does not occur by delegation.. Yes, Mr. Mahmoud Al-Hashemi had a problem, and he did not leave the precaution of adding the divorce to him on the part of the husband.

The second requirement:

Delegation in law.

Personal status laws varied in regulating authorization in divorce. Some of them regulated the issue of authorization in divorce, while others did not address it. The amended Iraqi Personal Status Law No. 188 of 1959 included texts that defined the meaning of authorization, and this is what Article (34/1) indicates. Eavesdropping on (divorce is the lifting of the marriage certificate by the husband or the wife, whether she delegated it or imposed it, or by the judge. Divorce does not take place except in the form specified for it by the legislator) We note that the Iraqi legislator did not clarify what constitutes a divorce effected by authorization, retroactive or irrevocable, and what is the formula that The Iraqi legislator relies on it, since it did not specify on which doctrine the judge should base his appeal (43).

### **Conclusions:**

- 1- Imami jurisprudence established several definitions for agency, the most important of which is "a mandate to dispose of a matter during his life." We find them excluding agency from some contracts that may be similar to it, such as a deposit and others.
- 2- It became clear that the Iraqi legislator, in Personal Status Law No. 188 of 1959, mentioned the authorization to the wife, but did not clarify its provisions, and thus referred to its first article.
- 3- It became clear that the jurists of the Imami school of thought did not agree on agency in the present and the absent, but contemporary jurists of the doctrine such as Sayyid al-Sistani see the validity of agency in the present and the absent.



4- It became clear that the Imami jurists did not permit the husband to authorize his wife to divorce herself.

Proposals //

1- We hope that the Iraqi legislator will follow the Imami jurisprudence in prohibiting delegation, since the Iraqi legislator did not stipulate its provisions precisely.

2- We hope that the Iraqi legislator will reinforce texts that confirm agency in the marriage contract.

(1 )Muhammad bin Makram bin Ali, Abu Al-Fadl, Jamal Al-Din Ibn Manzur Al-Ansari Al-Ruwaifa'i Al-Ifriqi (deceased: 711 AH), Lisan Al-Arab, vol. 11, Dar Sader - Beirut, third edition - 1414 AH, p. 736. See: Abu Abdul Rahman Al-Khalil bin Ahmed bin Amr bin Tamim Al-Farahidi Al-Basri (deceased: 170 AH), Kitab Al-Ain, vol. 5, Al-Hilal Library House, without year of publication, p. 405.

( 2) Majd al-Din Abu Taher Muhammad bin Yaqoub al-Fayrouzabadi (deceased: 817 AH), Dictionary of the Ocean, Al-Resala Foundation for Printing, Publishing and Distribution, Beirut - Lebanon, Edition: Eighth, 1426 AH - 2005 AD, p. 1069.

(3 ) Surah Al-Isra, verse 2

(4) Directed by Abu Abdullah Ahmad ibn Muhammad ibn Hanbal ibn Hilal ibn Asad al-Shaybani, known as Imam Ahmad ibn Hanbal (deceased: 241 AH), Musnad of Imam Ahmad ibn Hanbal, Shuaib al-Arnaut - Adel Murshid, and others, chapter on the hadith of Ubadah ibn Samit, hadith number 22823, Part 37, Al-Resala Foundation, 1st edition, 2001 AD, p. 418.

(5 ) Mr. Muhammad Mortada Al-Husseini Al-Zubaidi, The Bride's Crown from Jawaher Al-Qamoos, Arab Heritage, Kuwait, 1965 AD, p. 99.

(6 ) Al-Ifriqi, Lisan Al-Arab, vol. 11, previous source, p. 746.

(7) Surah Al-Muzzammil, Verse (9)

(8) Surat Al-An'am, verse (102)

(9) Arabic Language Academy in Cairo (Ibrahim Mustafa / Ahmed Al-Zayat / Hamed Abdel Qader / Muhammad Al-Najjar), Al-Waseet Dictionary, vol. 2, Al-Dawa Press, without year of publication, p. 1054.

(10 ) Surah Yunus, verse (85).

(11 ) Al-Muhaqqiq Al-Hilli Abi Al-Qasim Najm Al-Din Jaafar bin Al-Hasan (deceased 602 AH - 676 AH), The Laws of Islam in Issues of Permissible and Haram, directed, commented and edited by Abdul Hussein Muhammad Ali Baqal, Dar Al-Tafsir, Nakin Press, Iran - Qom, 1425 AH, p. 151.

- (12 ) See Muhammad bin Jamal al-Din Makki al-Amili, *Al-Lama' al-Dimashqiyyah fi Jurisprudence of the Imamiyyah*, Dar al-Fikr Publications - Iran - Qom, first edition, 1411 AH, p. 144.
- (13 ) See Muhammad Reda Abdul-Jabbar Al-Ani, *Agency in Sharia and Law*, Al-Ani Press, Baghdad, pp. 51-52.
- (14 ) Sheikh Muhammad Hussein Kashif Al-Ghita, Editor of the Magazine, Part 4, *The Scientific Complex for Approximation between Islamic Schools of Thought - Cultural Aid*, Fajr Al-Islam Press - Tehran, first edition, 1426 AH - 2005 AD, p. 40.
- (15 ) Sayyed Ali Al-Husseini Al-Sistani, *Selected Issues in Worship and Transactions*, without place and year of publication, issue, 848, p. 332. Sayyed Ali Al-Husseini Al-Sistani, *Minhaj Al-Salehin*, Al-Muamalat, Part 2, First Section, Dar Al-Histor Al-Arabi, Beirut-Lebanon, Fourteenth Edition, 1429 AH - 2008 AD, p. 340.
- (16 ) Sheikh Muhammad Hussein Kashif Al-Ghita, previous source, p. 42.
- (17 ) Sayyed Muhammad Sadiq Al-Husseini Al-Rawhani, *Al-Sadiq's Jurisprudence*, vol. 30, Al-Ghadir Printing, Publishing and Distribution Company, Holy Qom, first edition, year 2008 AD - 1249 AH, p. 146.
- (18) There is a third saying that does not differ from the first saying in attributing evidence to the news of Zurara. We find from them stopping with the issue and it is reported from Hasan bin Sama'ah, which is to consider directness absolutely, and from Al-Kulayni stopping with the issue. Their reasoning is: based on the news of Zurara, and you have made clear what is in it, what appears to be the permissibility of proxy in it absolutely for both the absent and the present. See Sheikh Al-Kulayni, *Al-Kafi*, vol. 6, chapter on agency in divorce, previous source, p. 130.
- (19 ) Zain al-Din bin Ali al-Amili, *Paths of Understanding to Revise the Laws of Islam*, vol. 2, Misr op., p. 28.
- (20 ) See Sheikh Al-Tusi, *Al-Nihayah*, without place of publication, without the year of publication, p. 511.
- (21) Abdul Aziz bin Nahrir bin Abdul Aziz bin Al-Barraj Al-Tarabulsi, known as (Ibn Al-Barraj) (400-481 AH), a Shiite jurist and judge in the fifth century. He attended the lessons of Sayyid Al-Murtada and Sheikh Al-Tusi, and he was appointed judge of Tripoli in the year 438 AH. See the author of *Al-Qadi Ibn Al-Barraj*, *Al-Muhadhdhab*, vol. 2, Sayyid Al-Shuhada Scientific Foundation, p. 1406, p. 277.
- (22 ) See Ibn Hamzah al-Tusi, *Al-Wasila to Attaining Virtue*, previous source, p. 323.
- (23 ) See Al-Hurr Al-Ameli, *Wasa'il Al-Shi'a*, vol. 19, Al-Bayt Foundation, Al-Ahya Al-Turath, Qom - Iran, 1414 AH, pp. 161-169.
- (24) Sheikh Al-Kulayni, *Al-Kafi*, vol. 6, chapter on agency in divorce, previous source, p. 129.

(See the same source. See Sheikh Muhammad bin Al-Hasan Al-Hurr Al-Amili (who died in 1104 AH), *Wasa'il Al-Shi'a*, vol. 22, section (39) that it is not a condition for the direct divorce to take place on its own..., Al-Bayt Foundation for Heritage Revival, 3rd edition, for the year 1429 AH - 2008 AD, p. 89 H ( 28098)

(25) Sheikh Al-Kulayni, *Al-Kafi*, vol. 6, chapter on agency in divorce, previous source, p. 129. See Sheikh Muhammad bin Al-Hasan Al-Hurr Al-Amili, *Wasa'il Al-Shi'a*, previous source, p. 90 H (28099)

(See the same source.

(See Sheikh Muhammad bin Al-Hasan Al-Hurr Al-Amili, *Wasa'il Al-Shi'a*, previous source, p. 90 H (28101).

(26) See Sheikh Al-Kulayni, *Al-Kafi*, vol. 6, chapter on agency in divorce, previous source, p. 130. See Sheikh Muhammad bin Al-Hasan Al-Hurr Al-Amili, *Wasa'il Al-Shi'a*, previous source, p. 90, H (28100)

( 27) See Sheikh Muhammad bin Al-Hasan Al-Hurr Al-Amili, *Wasa'il Al-Shi'a*, Chapter (16) Formula for Divorce, previous source, p. 41, H (27975).

(28 ) A term used in the books of jurists, and what is meant by it is (what was previously mentioned, mentioned, or written)

(See Sheikh Muhammad bin Al-Hasan Al-Hurr Al-Amili, *Wasa'il Al-Shi'a*, previous source, p. 90 at the end of the hadith (28100).

(29 ) Law (156) was published in the Iraqi Gazette, Issue (2795) on 9/22/1980.

(30 ) Decision of the Jaafari Sharia Appeals Authority No. (270) dated 12/5/1962 AD, unpublished.

(31 ) Resolution No. 1117/Legitimacy 1970 dated 6/6/1970 AD, unpublished.

(32) *Al-Zabdah al-Fiqhiyyah: Al-Tarhini Al-Amili*, 014/7

(33 ) *Wasa'il Al-Shi'a: Al-Hurr Al-Amili*, 94/22.

(34 ) *Wasa'il Al-Shi'a*, by Al-Hurr Al-Amili, 22/94

(35 ) *Minhaj al-Salehin*, by Sayyid Abu al-Qasim al-Khoei 2/294

( 36) Nickel Muhammadu Salloum al-Jubouri, *Rulings on Pending Divorce, Durub al-Ma'rifa for Publishing and Distribution*, Alexandria - Egypt, year of publication, 2022, p. 36.

## References

The Holy Quran .

- 1) Abu Abd al-Rahman al-Khalil bin Ahmad bin Amr bin Tamim al-Farahidi al-Basri (deceased: 170 AH), Kitab al-Ain, vol. 5, Al-Hilal Library House, without year of publication.
- 2) Abu Abdullah Ahmad ibn Muhammad ibn Hanbal ibn Hilal ibn Asad al-Shaybani, known as Imam Ahmad ibn Hanbal (deceased: 241 AH), Musnad of Imam Ahmad ibn Hanbal, Shuaib al-Arnaut - Adel Murshid, and others, chapter on the hadith of Ubadah ibn Samit, hadith no. 22823, c. 37, Al-Resala Foundation, 1st edition, 2001 AD.
- 3) Al-Hurr Al-Amili, Wasa'il Al-Shi'a, vol. 19, Al-Bayt Foundation, Al-Ahya Al-Turath, Qom - Iran, 1414 AH.
- 4) Zain al-Din bin Ali al-Amili, Paths of Understanding to Revise the Laws of Islam, Part 2, without place of publication, 1431 AH.
- 5) Sayyed Abu al-Qasim al-Khoei, Minhaj al-Salihin, Part 2, Dar al-Ilm, Najaf al-Ashraf, without year of publication.
- 6) Sayyed Ali Al-Husseini Al-Sistani, Minhaj Al-Salehin, Al-Muamalat, Part 2, First Section, Dar Al-Histor Al-Arabi, Beirut - Lebanon, Fourteenth Edition, 1429 AH - 2008 AD.
- 7) Mr. Muhammad Hassan Al-Tarhini Al-Amili, Al-Zabdah Al-Fiqhiyyah fi Sharh Al-Rawdah Al-Bahiyya. Part 7, Dar Al-Fiqh for Printing and Publishing, Iran, 1427 AH.
- 8) Mr. Muhammad Sadiq Al-Husseini Al-Rawhani, Al-Sadiq's Jurisprudence, vol. 30, Al-Ghadeer Printing, Publishing and Distribution Company, Holy Qom, first edition, year 2008 AD - 1249 AH.
- 9) Mr. Muhammad Mortada Al-Husseini Al-Zubaidi, The Bride's Crown from the Jewels of the Dictionary, Arab Heritage, Kuwait, 1965 AD.
- 10) Sheikh Al-Tusi, Al-Nihayah, without place of publication, without year of publication.
- 11) Sheikh Muhammad Hussein Kashif Al-Ghita, editor of the magazine, Part 4, The Scientific Complex for Approximation between Islamic Schools of thought - Cultural Assistance, Fajr Al-Islam Press - Tehran, first edition, 1426 AH - 2005 AD.
- 12) Majd al-Din Abu Taher Muhammad bin Yaqoub al-Fayrouzabadi (deceased: 817 AH), Dictionary of the Ocean, Al-Resala Foundation for Printing, Publishing and Distribution, Beirut - Lebanon, eighth edition, 1426 AH - 2005 AD.
- 13) The Arabic Language Academy in Cairo (Ibrahim Mustafa / Ahmed Al-Zayat / Hamed Abdel Qader / Muhammad Al-Najjar), Al-Waseet Dictionary, vol. 2, Al-Dawa Press, without year of publication.

- 14) Al-Muhaqqiq Al-Hilli Abi Al-Qasim Najm Al-Din Jaafar bin Al-Hasan (deceased 602 AH - 676 AH), The Laws of Islam in Issues of Permissible and Haram, directed, commented and edited by Abdul Hussein Muhammad Ali Baqal, Dar Al-Tafsir, Nakin Press, Iran - Qom, 1425 AH.
- 15) Muhammad bin Jamal al-Din Makki al-Amili, Al-Lama' al-Dimashqiyyah fi Jurisprudence of the Imamiyyah, Dar al-Fikr Publications - Iran - Qom, first edition, 1411 AH.
- 16) Muhammad bin Makram bin Ali, Abu Al-Fadl, Jamal Al-Din Ibn Manzur Al-Ansari Al-Ruwaifa'i Al-Ifriqi (died: 711 AH), Lisan Al-Arab, vol. 11, Dar Sader - Beirut, third edition - 1414 AH,
- 17) Muhammad Reda Abdul-Jabbar Al-Ani, Agency in Sharia and Law, Al-Ani Press, Baghdad.
- 18) Nickel Muhammadu Salloum al-Jubouri, Rulings on Pending Divorce, Durub al-Ma'rifa for Publishing and Distribution, Alexandria - Egypt, year of publication, 2022.