

Marital Abuse: Its Impact on Wife's Right to her Dowry in Islamic Family Law

Orwah Nassir Dwairi*

Fiqh and Usul Al-Fiqh Department, Faculty of Sharia, Al al-Bayt University, Jordan

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* Corresponding author:

orwahdwairi@aabu.edu.jo

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Abstract

Objectives: The prime purpose of the present study is to critically address how the two Sharia arbitrators determine the percentage of marital abuse with a focus on its legal impacts on wife's right to her dowry.

Methods: Qualitative and quantitative research methods can be employed in order to support and strengthen the arguments of the present study over the issue of the determination of the percentage of marital abuse. It is highly important to jurisprudentially contextualise the issue of marital discord and conflict within the Islamic *Fiqh*. The researcher argues that Article No. 126 of Jordan's Family Law No. 15 of 2019 is not effective enough in addressing cases of marital abuse because there is a steady increase in rates of the divorce based on issues of the marital discord and conflict in Jordan.

Results: This study has come to the result that the two Sharia arbitrators' report does not comply with Sharia guideline and *Fiqh* conditions in protecting wife's right to her dowry. It is the contention of the researcher that the prompt and deferred dowry is the wife's inalienable right in the Holy Quran and Sunnah. Thus, Article No. 126 needs to be reviewed to be more compatible with Islamic Law.

Conclusions: Therefore, this study highly concludes that the determination of percentage of marital abuse in Sharia arbitration must be abolished and therefore the role of arbitrators is limited the process of marital reconciliation, if applicable, to be more compatible with Islamic *Fiqh*.

Keywords: Marital abuse, marital discord and conflict, *Fiqh*, family law, dowry.

الإساءة الزوجية: أثرها على حق الزوجة في مهرها في قانون الأحوال الشخصية الإسلامي

عروة ناصر الدويري*

قسم الفقه وأصوله، كلية الشريعة، جامعة آل البيت، الأردن.

ملخص

الأهداف: هدفت هذه الدراسة لمناقشة كيفية تحديد المحكمين الشرعيين للنسبة المئوية للإساءة الزوجية في قضايا الشقاق والتزاع مع التركيز على آثارها القانونية على حق الزوجة في مهرها.

المنهجية: ومن خلال توظيف الدراسة للمنهج التحليلي النوعي والكمي لتعزيز منهجيتها في مناقشة مسألة تحديد النسبة المئوية للإساءة الزوجية، توصل الباحث إلى أن المادة رقم (126) من قانون الأسرة الأردني رقم (15) لسنة 2019م ليست فعالة بما يكفي في معالجة قضايا الإساءة الزوجية، لأن هناك زيادة مطردة في معدلات الطلاق على أساس قضايا الشقاق والتزاع الزوجي في الأردن. علاوة على ذلك، يتم استغلال هذه القضايا في كثير من الأحيان في انتهاك حق الزوجة في مهرها بناءً على ما يُسعى تحديد نسبة الإساءة الزوجية.

النتائج: خلصت هذه الدراسة إلى أن تقرير المحكمين الشرعيين في بعض تفاصيله لا يحقق الحماية الشرعية والقانونية لحق الزوجة في مهرها. وبالتالي، فإن المادة رقم (126) تحتاج إلى إعادة النظر لتكون أكثر توافقاً مع الشريعة الإسلامية.

التوصيات: لذلك تُوصي هذه الدراسة بإعادة النظر في تحديد نسبة الإساءة الزوجية في التحكيم الشرعي، وبالتالي يقتصر دور المحكمين على عملية التّصالح الزوجي - إن أمكن - لتكون أكثر توافقاً مع الفقه الإسلامي.

الكلمات الدالة: الإساءة الزوجية، الشقاق والتزاع، الفقه، قانون الأحوال الشخصية، المهر.

Introduction

Marriage, as prescribed by Allah, is the lawful union of a man and woman based on mutual consent. It is a contract that results in the man and woman living with each other and supporting each other within the limits of what has been laid down for them in terms of rights and obligations (Dogarawa, 2009). Marriage in Islam is a legal contract between a man and a woman to promoting their love, harmony and affection. Thus, the husband and his wife should understand properly legal implications arising from this contract. Moreover, Islam has established a number of Sharia rules to ensure good marital relations among spouses. Islamic law has stipulated clearly that marital rights and duties among spouses must be respected to avoid as much as possible causes of the marital dispute. As a wife has her own rights, she should assume her responsibilities to the same degree. What arises from this legal relationship as rights and obligations must be respected and applied by the husband and his wife. Understanding requirements of the marriage contract can make their relationship more stable.

Islamic law provides us with reasonable and logical answers and solutions for marital problems. The best way to deal with these problems must be by the husband and his wife on their own. They are certainly more knowledgeable in identifying their problems than others. However, when their disagreement and dispute become more serious and complicated, Sharia arbitration procedure (Bambach, 2009) is highly recommended in Islam to help reconcile the situation before a divorce. Sharia arbitration is a legal method whereby disputants appoint a neutral third person (or a panel of third persons) to determine their dispute. Arbitration is beneficial for individual disputants and for the legal system as a whole. Arbitration generally provides a mechanism for disputants to resolve their dispute (Slapper & Kelly, (2009). Two arbitrators, one from the husband's relatives, and one from the wife's relatives, must be appointed to try to make peace and to settle their differences before divorce. Sharia arbitration is a legal process considered an alternative to litigation for divorce. This process is different from mediation. While in mediation, two disputing parties come to a joint agreement to solve their problems, in arbitration, based on the information the two disputing parties deliver to the arbitrator, he makes a decision on how their problems should be sorted out. Ms. Boyd's Report asserts that arbitration should continue to be an alternative dispute resolution option that is available in family and inheritance law cases, subject to the further recommendations of this Review. The Arbitration Act should continue to allow disputes to be arbitrated using religious law, if the safeguards currently prescribed and recommended by this Review are observed (Boyd, 2004).

Research Objectives and Aims

This research endeavours to accomplish the following objectives:

Firstly, the major aim of this study is to examine how the two Sharia arbitrators assess the percentage of marital abuse and on which legal ground they write their legal report regarding marital abuse. According to the guideline of Holy Quran, the main task of the two Sharia arbitrators is to strive as much as possible to resolve spouses' marital disputes and restore their relationship to its proper course. If they are unable to do so, the two Sharia arbitrators are requested to submit their report that should include all fine details to Sharia court. The researcher seeks to discuss to what extent the two Sharia arbitrators' report in determining the percentage of marital abuse corresponds to Four Fiqh Schools of thoughts' point of views.

Secondly, it is the contention of the researcher that wife's dowry is considered as an inalienable legitimate right. Therefore, wife's deprivation of her dowry totally or partially under the pretext of marital discord and conflict must be addressed carefully. One of aims of this study is to endeavor to identify the main task of the two Sharia arbitrators that is consistent with what is stipulated in the texts of the Holy Qur'an and Sunnah.

Thirdly, this study aims also to analyze official statistics issued by Supreme Judge Department regarding cases of the marital discord and conflict. These statistics is very important to investigate to legal impact of these cases on wife's dowry.

Research Questions

The key question of the present research is: on which sound legal ground should the rate of marital abuse be determined by the two arbitrators? Other sub-questions can be raised in such context as follows:

1. To what extent is the determination of the rate of marital abuse compatible with 'Fiqh' Islamic law?
2. How should the two Sharia arbitrators write their report about marital abuse?
3. What is the legal role of the two Sharia arbitrators in reforming the marital relationship?

4. To what extent can the two arbitrators' report effect entitling wife's dowry?
5. How are the two Sharia arbitrators appointed by Sharia court?

Research Methodologies

In this study, qualitative and quantitative research methods can be employed to examining the determination of percentage of marital abuse and its impact legal impact on wife's right to her dowry. The quantitative research method is crucial to evaluate the extent to which arbitrators' report in determining the percentage of marital abuse is compatible with sound Sharia guidelines in settling marital dispute as much as possible. In order to maintain the original texts of the Holy Quran and its literal translation, the researcher depends on the most authentic books of classical exegesis of the Holy Quran. In same vein, Fiqh as containing a scholarly discussion about Muslim everyday issues, the researcher aims to use *Usul al Fiqh* science in discussing views of the Fiqh scholars on the issue of marital discord and conflict. *Usul al Fiqh* also can be also beneficial to go to crux of matter of marital abuse and its legal impact on wife's right to her dowry.

1.1 Understanding Marital Abuse within Islamic Law 'Fiqh'

Marital life is deemed as God's grace in Islam. Marriage has been ordained by Allah as the correct and legal way to produce children and replenish the earth. The family is the basic unit of an Islamic nation or society. Marriage in Islam is more than just a means of obtaining legal sex; it is an extremely important institution which safeguards the rights of men, women and children while satisfying the physical, emotional and intellectual needs of the family members (Dogarawa, (2009). One of His signs is that He creates for us our wives so that we find our spiritual, physical and psychological requirements. It has been described in one of the most famous Qur'anic verse (*Al- Rum*, 21) in the Holy Quran regarding marriage that "among His signs is this that He created for you wives from among yourselves, meaning, He created females of your own kind, to be wives for you that you may find repose in them" (Ibn Kathir, 2003). Marriages built on principles of love, honour; respect and mutual caring are far superior to temporary relationships with a variety of partners. Such marriages stabilise society by protecting its primary unit, the family. Islam therefore, advocates strongly marriage and discourages its dissolution (Dogarawa, 2209).

Allah also command spouses to treat each other kindly and peacefully. the Qur'anic verse of (*An- Nisa*, 128) says "(And live with them honorably), by saying kind words to them, treating them kindly and making your appearance appealing for them, as much as you can, just as you like the same from them" (Ibn Kathir, 2003).. Spouses must cooperate with each other to bear the hardship of marriage. While each one has duties to another, each one has also right over another. In the Qur'anic verse of (*Al- Baqarah*, 228), Allah says "And they have rights similar over them to what is reasonable" (Ibn Kathir, 2003). As a Muslim, marital life is simply a romantic relationship fortified by marriage contract. Each one should feel familiarity, affection and tranquility towards the other.

It is worth noting that the concept of marital abuse is closely related to the violation of legal rights arising from the marriage contract. These rights can easily be identified by the husband and his wife based on their correct understanding of requirements of the marriage contract. In fact, while it is extremely important to define the concept of marital abuse correctly but it is also crucial to understanding a pattern of the behaviors used by one partner to maintain power and control over another partner in an intimate relationship. Marital abuse can be physical harm and psychological damage caused by whether one spouse or both spouses. Islam has expanded the concept of marital abuse to include all inappropriate practices which are incompatible with intimate relations and kind treatment '*al- Moāshra bi al Māroûf*'. Moreover, the concept of marital abuse is not only the domination and control are shown through physical, psychological, emotional, verbal, sexual, and/or economic abuse (Maryland, 2009) but also a violation of husband's human rights or wife's human rights. Therefore, there is no any legal or social grounds can justify spouses' choice to abuse each other or anyone of them harms another because they have powers over that person.

Zāleh Kāmārūddin and Umār A. Oséni assert that marital abuse is actually against the principles and the spirit of the Qur'an and the *Sunnah* of the Prophet. The ill-conceived perception that Islam is bias against women is dispelled and the real image of Islam and women will be appreciated (2013). This understanding towards Islam's philosophy concerning marital abuse is consistent with what was stated by the World Health Organization regarding violence against women that "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts,

coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". (Word Health Organization, 2020).

1.2 Understanding Marital Abuse in Family Law

Under family law, cases of marital discord and conflict can be assessed depending on a number of psychological and physical abuses. Article (126) of Jordan's family law states that upon request, one of spouses can seek to terminate her/ his marriage life based on the case of marital discord and conflict. Taking into consideration, marital abuse can be physical or psychological and behavioral or verbal.

For example, physical abuse includes a number of unsuitable acts practised by one of spouses towards the other such as beating, electric shocks, violence threats, burning or slapping, punch, kicked and choked and withholding of food or medical attention and sleep deprivation, etc. Moreover, psychological abuse can also contain a number of inappropriate practices such as verbal abuse, derogative or slanderous statement, social isolation, disproportionate ignoring or excessively, humiliation, insulted swearing and cursing, etc. What is more, non-commitment of one of the spouses to the marital duties and rights as referred to in Chapter Three of this law is deemed marital abuse.

Marital ill-treatment should be investigated carefully taking into account spouses' religion, social environment, prevailing culture and economic conditions. Most of psychological and physical abuse examples can vary from one case to another and one person to another. For example, inability of the husband to give the determined alimony to his wife and children should be under careful consideration. Estimating wife's alimony should depend on her husband's income and financial ability. Subsequently, the determination of the two Sharia arbitrators of marital abuse is obviously relative estimation because it depends on their convictions and understanding regarding each case. However, one of the positive amendments to Jordan's Family Law No. 15 of 2019 is that the concept of marital abuse has been extended to include psychological and physical abuses such as poor morals and bad behaviour as well as unlawful relationship and the negative interference in couple's private life by their extended family. This can help to assess marital abuse based on different legal, social, family and economic grounds.

2.1 Addressing Marital Abuse within Islamic Law

Islamic law also made it clear how spouses should address their marital disputes on sound legal and social grounds. Both husband and wife should seek to narrow their marital disagreement as much as possible by themselves. These two Qur'anic verses (*An- Nisa*, 128) and (*An- Nisa*, 35) provide us with clear cut guidelines in dealing effectively with marital problems. The literal translation of this Qur'anic verse (*An- Nisa*, 128) is that "and if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better" (Ibn Kathir, 2003). The husband should take the initiative in advising his disobedient wife "*Nāshiz*"⁽¹⁾ and addressing her ill conduct. This should be done by three Sharia steps. The first one is to advise her faithfully. If this is pointless, the second step is to refuse sharing the bed with his wife a certain period. If this is also does not give bear fruit, the final step is to beat her in a manner that is not excruciating or leaving marks. The aim of this beating is to deter her only. The literal translation of this Qur'anic verse (*An- Nisa*, 35) is that "If you fear a breach between the two, appoint (the two) arbitrators, one from his family and the other from her family if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things" (Ibn Kathir, 2003). '*The Fūqāhā*' Muslim scholars say that when estrangement occurs between the husband and wife, the judge refers them to a trusted person who examines their case in order to stop any wrongs committed between them. If the matter continues or worsens, the judge sends a trustworthy person from the man's family to meet with them and examine their case to determine whether it is best for them to part or to remain together. Allah gives preference to staying together (Ibn Kathir, 2003).

As Quranic verses (*Al- Baqarah*, 228) and (*An- Nisa*, 35) guide us in case of intractable dispute between the husband and his wife, Sharia judge should refer disputing couples to the two Sharia arbitrators who can intervene in solving their problems in a due

1 The Literal translation of (An-Nisa 128) is that (As to those women on whose part you see ill conduct,) meaning, the woman from whom you see ill conduct with her husband, such as when she acts as if she above her husband, disobeys him, ignores him, dislike him, and so forth. When these signs appear in a woman, her husband should advise her and remind her of Allah's torment if she disobeys him.(Ibn Kathir, 2003)

time. The two Sharia arbitrators must be expert and fulfill *Fiqh* conditions that entitle them in addressing spouses' incredible differences. Their major task is to investigate spouses' marital problems to sorting these problems out. If so, the husband and his wife should resume their normal marital life.

Taking into account the Quranic verse (*An- Nisa*, 35), the two Sharia arbitrators' primary task is to exert a great effort to reconcile the husband with his wife. If the two Sharia arbitrators are unable to restore marital relations to proper course because spouses' intractable marital disputes, they should write their decision and opinion regarding marital status to Sharia judge. In this stage, whether they succeeded or failed to reconcile the husband with his wife, assignment of the two Sharia arbitrators is over. Spouses then can decide to terminate their marital life by their own. This is how issues of the marital discord and conflict should be handled in classical *Fiqh*. Therefore, the primary task of two Sharia arbitrators is not particularly to specify what is called '*Nisbāt al- isāh*' the percentage of marital abuse or to determine how much the wife should deserve out of her dowry.

2.2 Addressing Marital Abuse within Family Law

Article (126) of Jordan's family law indicates that upon wife's request, if she asks for legal dissolution, Sharia judge must firstly investigate her claim regarding her husband's abuse. Therefore, Sharia judge should exert a great effort to reconcile the wife with her husband. Sharia judge should also urge the husband to reconcile with his wife. Sharia judge can accordingly postpone wife's lawsuit for a period of no less than a month. After that period, if the wife insists on her case, Sharia judge must refer her lawsuit to the two Sharia arbitrators who shall initiate in investigating wife's claim regarding her husband abuse.

On the other hands, if the husband suffers from his wife's abuse, Sharia judge should make great effort to reconcile the husband with his wife. If this is not possible between them, Sharia judge should postpone husband's case for a period of no less than a month. After the expiry of that date, if the reconciliation was not completed and the husband still insist on his lawsuit regarding his wife abuse, the judge should refer the husband's lawsuit to the two Sharia arbitrators who shall initiate in investigating the husband claim regarding his wife's abuse.

Article (126) stipulates also that the two Sharia arbitrators must investigate spouses' marital case by exploring reasons lying behind their ill-marital relationship. They have also the legal right to discuss spouses' marital abuse with anyone who is familiar with their problems to help find reasonable solutions. Based on their investigation, they should write down their own opinion and personal conviction in an official record which must be signed by them and submitted to Sharia court. If they believe that there is still room for reconciliation between spouses in a satisfactory manner, they must record this and submit it to the Sharia court.

According to Article (126) of Jordan's family law, if the two Sharia arbitrators are unable to restore marital relationship, they have the right to decide the legal dissolution of the marriage of disputing spouses. Upon Sharia judge's request, the husband must divorce his wife as a minor irrevocable divorce '*Tālāq bā'in sūgra*'. Based on their investigation, if the wife is guilty and completely responsible for marital abuse, the two Sharia arbitrators can determine an appropriate compensation that must be paid back to the husband. Otherwise, if the husband is guilty and completely responsible for marital abuse, the wife has therefore the right to claim her deferred dowry in full as well as her alimony '*Iddāh*'⁽²⁾. If the two Sharia arbitrators determine that marital abuse caused by both the husband and his wife equally, they must evaluate percentage of marital abuse and how much the wife should deserve from her dowry.

In the case of disagreement between the two Sharia arbitrators in investigating the marital case of spouses who are in unstable relationship, Sharia judge can appoint a third arbitrator alongside with the assigned ones. Sharia judge has also the legal right to appoint new other two Sharia arbitrators in the same case to be investigated once again. Subject to paragraph (A) of Article (126) of this law, marital discord and conflict can be proven by the hearing testimony of anyone who is familiar with spouses' dispute. Moreover, it is legally sufficient to prove marital abuse based reputation of spouses' dispute.

Marital abuse can be divided into three cases (Jordan's Family Law No. 15 of 2019): Firstly, the husband can fully be responsible for marital abuse only in two cases. The first one is when the husband is accused of marital infidelity. The second case

2 According to Islamic law, *Iddāh* is the specified period of waiting after divorce. For a wife who is not pregnant, the period of waiting after divorce or dissolution of marriage shall be three full monthly periods. (Jordan's Family Law 15 of 2019).

is when the husband practices sexual intercourse in an abnormal manner. In these two cases, the two Sharia arbitrators should make a great effort in reconciling the husband with his wife. If this is impossible, the husband should pay wife's dowry in full, namely the deferred and prompt dowry. Secondly, the wife is fully responsible for marital abuse if she practices an illegal sexual relationship or leaving her husband's house without any reasonable justifications or in the case of her disobedience to her husband "Nāshiz". In these cases, the wife should pay back an adequate compensation to her husband. Thirdly, joint marital abuse practised by the husband and his wife equally. The two arbitrators should write their report and specify what it is known as the percentage of marital abuse.

For example, the most common determination of the percentage of marital abuse is that husband's responsibility for marital abuse is 50% and the wife's responsibility for marital abuse is 50%. What does this mean? This means that the right of the wife to her dowry only 50% of total dowry. In other words, the wife deprived a half of her dowry under the pretext of marital abuse. Under this legal system, when the husband determines to divorce his wife, he prefers to file a marital abuse lawsuit to Sharia court to depriving his wife a part of her dowry. Thus, this modern legal system provides the husband with justifications and excuses to depriving the wife a part of her dowry. In many cases, the husband can fabricate marital disputes in order to deprive the wife a part of her dowry.

While it is necessary to modernize legislative structure and legal tools in addressing Muslim family life issues, it is also highly important to preserve the contents of Sharia law in protection rights of women. Islamic *Fiqh* identified by Muslims to be the main legislative base for codifying family laws regulating their family issues. What should be taken into account then is that family law must be compatible with Islamic law. Since there is wide *Fiqh* differences among Islamic Schools of thought concerning many issues of Muslim life, codifying family law must be based on the most reliable *Fiqh* opinions that fit with our contemporary lifestyle. Wife's right to her dowry established not only in the Holy Quran and Sunnah, but also according to *Fiqh* consensus of the Islamic schools of thought. Thus, depriving the wife a part of her dowry must be deeply debatable. Moreover, according to the four Islamic schools of thought, namely *Hānāfi*, *Mālikī*, *Shāfi'i* and *Hānbālī*, if the husband decides to divorce his wife, he can do so and gives his wife her full dowry whether in the case of *Al-shiāqāq* or *we āl-nizāh* or not.

3.1 Legal Conditions of Arbitration Sharia Report

As Arbitration Sharia Report is a crucial report in deciding the fate of family life as well as including how the marital bond should be annulled, there are a number of legal condition should be met. These conditions can be outlined as follows ⁽³⁾: (Sharia Procedures Code, No. 31 of 1959. (My own translation)

- 1- This report should be accurately written in a formal form and it is not acceptable for the two Sharia arbitrators to submit their report orally.
- 2- The report should be also dated and signed by the two arbitrators.
- 3- This report should include that the two Sharia arbitrators have made every effort to reconcile the husband with his wife by any available means.
- 4- The two Sharia arbitrators must firmly state that spouses should be separated based on minor irrevocable divorce because they have failed to reconcile between spouses.
- 5- The two Sharia arbitrators must clearly determine who is responsible for marital discord and conflict and the percentage of marital abuse. They also should specify the impact of the legal cases of marital discord and conflict on the wife's entitlement to her dowry. They have to determine if the wife deserves the full or half or a part of her dowry.
- 6- The two Sharia arbitrators must hold several discussion sessions before submitting the final report on legal cases of marital dispute. This means that the two Sharia arbitrators have to justify every signal decision in their report concerning marital abuse as well as their convictions regarding spouses' claims, evidences and witness.
- 7- The report should indicate that each of the spouses took an oath and they have also attended arbitration sessions. In the

3 Sharia Procedures Code, No. 31 of 1959 and its amendments for year of 2016 and Jordan's Family Law No. 15 of 2019. (My own translation)

absence of one of the parties, the arbitrators must indicate that they have tried to communicate with the absent party by the available means.

8- It is not obliged for arbitrators to submit their report together. Each of them has the legal right to submit his report individually and separately

9- The report must be very confidential and it is strictly prohibited to inform external or foreign party on the content of the report.

10- Finally, the report itself is not adjudication unless the Sharia judge approves it. It must also fulfil the legal requirement according to Supreme Judge Department's instructions.

3.2 Legal Powers of the Two Sharia Arbitrators in Investigating Marital Abuse

To go further into *Fiqh* details regarding the legal powers of the two Sharia arbitrators in determining the percentage of marital abuse and its impact on wife's dowry, according to Four Islamic Schools of thought, namely *Hānāfi*, *Mālikī*, *Shāfi'i* and *Hānbālī*, the two Sharia arbitrators' main real task is to make every effort and scrupulously strive to reconcile the husband with his wife (Al-Desouki, Al-Gharnati, Al-Mawq& Al- Mawardi 1999). *Ibn Rushid* asserts that Muslim scholars have agreed that the two Sharia arbitrators have the legal right to reconcile the husband with his wife because their major task is to restore back spouse's relation as usual (Ibn Rushd, 2004).

In the case that the two Sharia arbitrators failed to reconcile the husband with his wife because their marital conflict and discord have become more intractable and raging, there is a considerable disagreement among *Fiqh* jurists about the legal power of the two Sharia arbitrators to annul marriage contract of quarrelling spouses. According to, *Hānāfi*, *Shāfi'i* and *Hānbālī* Schools of thoughts, the two Sharia arbitrators don't have the legal right put an end to the marriage life of disputing spouses. This is because the two Sharia arbitrators considered only as spouses' representative to solving their marital problems on their behalf. Their task in the cases of marital discord and conflict is more close to social task rather than legal or judicial duty. Their task is limited to the process of marital reconciliation. Therefore, the two Sharia arbitrators are not allowed to determine what is called the percentage of marital abuse. The right of wife in her dowry is still inalienable. Spouses can put an end to their marital relation by their own decision. This is the opinion of the majority of Muslim scholars. When the husband decides to divorce his wife, he can do so but he should pay the full dowry to his wife. In contrast, when the wife requests '*Khūlā'*'⁽⁴⁾, a wife's request for divorce, she can do so but she must return her full dowry to her husband.

From other different point of view, according to *Mālikī* School of thought, the two Sharia arbitrators have the legal right to annul the marriage contract of disputing spouses regardless of their consent. Their task in investigating marital abuse should be as judicial assignment. They are as judges in their task not as spouses' representative. However, after extensive search in *Mālikī* School of thought's books, there is no a clear cut an adopted *Fiqh* opinion allows the two Sharia arbitrators to determine the percentage of marital abuse. What is more, scholars of *Mālikī* School of thought assert that the wife's dowry is also inalienable right regardless of annulling the marriage contract of disputing spouses depending on the two arbitrators' decision. *Al- Imam Malik* also underlined that any compensation taken from the wife and paid to the husband must be considered as '*Khūlā'*' (Malik, 2004).

3.3 Marital Abuse and Wife's Dowry:

During the period of marital dispute and even after, women's dowry is an inalienable right firmly established in the Holy Quran, *Sunnah* and *Ijma* (juristic consensus)⁽⁵⁾. *Bāpriti* from *Hānāfi* Schools of thought has underlined that as the aim of dowry is to show the great position of women in the marriage contract, this dowry is obligatory in Sharia law (Bāpriti, 1999). *Al- Kāsani* also from *Hānāfi* Schools of thought has asserted that wife's dowry plays a crucial role in safeguarding her right and strengthening her position in marriage contract (Al- Kāsani, 1986). Dowry '*Māher*' a second fundamental element of an Islamic marriage contract is the inclusion of a *Māher* agreement. With its origins in the Holy Quran itself, the *Māher* is property given to the wife by the

4 According to Ibn Rushd, the term *Khūlā'* refers to a wife's request for divorce in which wife pays compensation for obtaining her divorce. (Ibn Rushd, 2004).

5 *Ijma* is an Arabic term referring to the consensus or agreement of Muslim scholars after the death of Prophet Mohammed – peace be upon him- on an issue in an era of ages. (Al-Zarkashi, 1994).

husband to indicate his willingness to marry as well as his respect for the bride (Lindsey, 2002).

A large number of *Fiqh* conditions required for wife's dowry in marriage contract to be valid and sound in Islamic law. For example, when wife's dowry must be paid and how much the wife deserves out of her dowry as well as when the wife forfeits her right to her dowry under marriage contract. Upon spouses consent, payment of the dowry can be accelerated or deferred upon spouses' consent (Al- Kāsani, 1986). The legal dissolution can be made by the husband or the wife or Sharia judge under certain *Fiqh* conditions for each case. The husband can make his decision to put an end to his relation with his wife by what is called '*Tālāq*'⁽⁶⁾ divorce. If he divorces his wife after the wedding night, she deserves her full dowry. In other case, if he divorces his wife before the wedding night, she deserves her half dowry. Conversely, the wife can also determine to end her marital life with her husband by what is called '*Khūlā'*'. In this case, the wife should pay back what her husband paid to her as a dowry. What is more, the Sharia judge has also the legal right to terminate marital life under a number of legal reasons.

Under marriage contract, wife's dowry is an inalienable right and there is no legal basis justified forfeiting the wife's dowry based on marital discord and conflict cases. According to Islamic law, the wife deserves her full dowry after first sexual intercourse or '*Al- khlūāh*'⁽⁷⁾. Moreover, the wife is entitled to her full dowry after the death of her husband regardless of any sexual intercourse or '*Al- khlūāh*' (Kāsani, al-Saadi, al-Samarqand, & Al-Nawawi, 1999).

For instance, it has mentioned in the Holy Quran (*An Nisa*, 4) that "And give to the women (whom you marry) their *Saāduqāt Nihlāh*" refers to the dowry" (Ibn Kathir, 2003). *Muhammad bin Ishaq* narrated from Az-Zuhri that *Urwah said that A'ishāh* said that '*Nihlāh*' means obligatory'. *Muqātil Qatadah* and *Ibn Jurayj* said, '*Nihlāh*' means 'obligatory' *Ibn Jurayj* added: 'specified'. *Ibn Zayd* said, "In Arabic, *Nihlāh*, refers to what is necessary. So Allah is commanding: Do not marry unless you give your wife something that is her right. No person after the Prophet is allowed to marry a woman except with the required dowry, nor by giving false promises about the dowry (intended)" (Ibn Kathir, 2003).

Therefore, the husband is required to pay a dowry to his wife with a good heart, just as he gives a gift with a good heart. This is why Allah said afterwards says in the Qur'anic verse (*An Nisa*, 4) "But if they, of their own pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm" (Ibn Kathir, 2003). This verse (*An Nisa*, 20) also confirms that "But if you intend to replace a wife by another and you have given one of them a *Qūntār* (An Arabic word refers to a large amount of money), take not the least bit of it back; would you take it wrongfully without a right and (with) a manifest sin?" (Ibn Kathir, 2003). This Qur'anic verse commands that when one of you wants to divorce a wife and to marry another one, he must not take any portions the dowry he gave the first wife, even if it were a *Qūntār* of money. This verse is a clear indication that the dowry could be substantial. The Qur'anic verse (*An Baqarah*, 237) also emphasizes that "if you divorce them before you have touched (had sexual relation with) them, and you have appointed for them their due (dowry), then pay half of that), unless they (the women) agree to remit it, or he (the husband), in whose hands is the marriage tie, agree to remit it" (Ibn Kathir, 2003).

From *Sunnah's* perspective, as a second source of Islamic law, there is a number of Hadiths also confirm that wife's dowry is her own right once her husband has sexual intercourse with her. For example, the Prophet said to a man, "Marry, even with (a *Māher* equal to) an iron ring"⁽⁸⁾. The following Hadith has also made it clear that the husband does not have the right to ask wife's dowry back under any justifications if he had sexual intercourse with her.

"The husband said, "My money, O Allah's Apostle!" The Prophet said, "You are not entitled to take back any money. If you have told the truth, *Māher* that you paid, was for having sexual relations with her lawfully; and if you are a liar, then you are less entitled to get it back". (Al- Bukhari, 1997)

Fiqh consensus '*Ijmā'*'⁽⁹⁾, as a third source of Islamic law, has also been taken place confirming that wife's dowry is an

6 In Islam, the husband pronounces the phrase "I divorce you" (in Arabic, *tālaāq*) to his wife. A man may divorce his wife three times, taking her back after the first two (reconciling). Under Islamic law the divorce may take place by the act of the parties themselves or by a decree of the court of law. (Bani, L.M & Hamza A. Pate, H, A)

7- *Al- khlūāh* is a lawful meeting in privacy between husband and his wife only under certain conditions

8- Al- Bukhari, *Sahih al-Bukhari*, Chapter: To give *Māher* in the form of material things, Book 67 Hadith 85.

9- '*Ijmā'* is the concept of juristic consensus (*ijmā'*) as an authoritative, binding source of Islamic law was originally conceived through the exercise of *ijtihād* undertaken by the Prophet's companions and learned scholars of the classical period. (Bakircioglu, 2018)

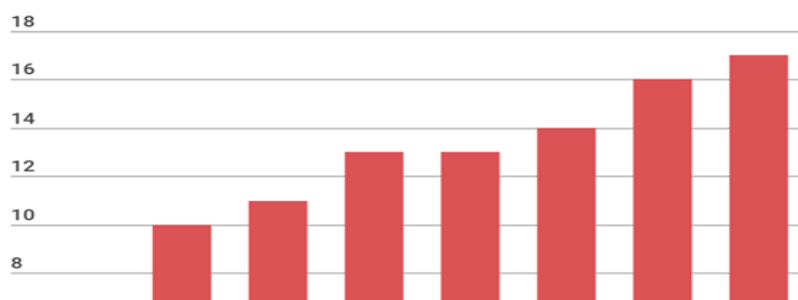
inalienable legal right to the wife. After this Sharia investigation, it can be asserted that the Holy Quran, *Sunnah* and *Ijmā* have considered wife's dowry as an inalienable legal right regardless of its value.

3.4 Reasons behind the High Rate of Divorce

Article (126) of Family Law No 15 of 2019 gives wife and her husband more flexible options to end their marriage based on issues of the marital discord and conflict. For example, spouses can prove marital abuse depending on close visual observation or eyewitness accounts or hearsay testimony. When ill- treatment between the husband and his wife become famous and frequent, it is easy to prove marital abuse in front of Sharia judge based on hearsay testimony. Consequently, a steady increase in a number of the divorce based on marital discord and conflict have become highly noticeable.

According to Supreme Judge Department's annual statistical report, in last five years, 16678 cases of divorce were due to marital conflict and discord at a rate of 87.5% of the total marriage dissolution. In 2015, the total cases of marriage dissolution were adjudicated in Sharia courts during the years (2011-2015) amounted to 13704 cases. 11,989 cases of divorce were due to marital conflict and discord at a rate of 87.4% of the total marriage dissolution. The previous Supreme Judge *Abdul-Karim Al-Khāsāwneh*, at a press conference, has also pointed out that there is a noticeable increase in divorce cases. He declares that the Supreme Judge Department has established Family Reform Offices to protecting those spouses who face marital abuse as much as possible (Alrai, 2020).

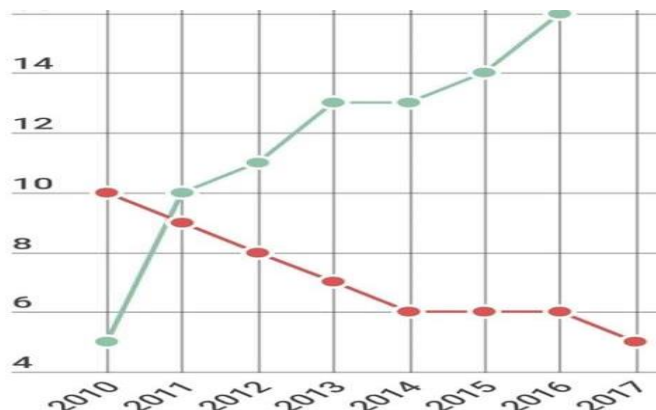
The Total Legal Cases of Marital Discord and Conflict Registered in Sharia courts in Jordan between 2011 -2017.



Cases No. 1000 1200 2435 2751 3069 3375 3542

Year 2011 2012 2013 2014 2015 2016 2017

The comparison between the percentage of cases of discord and conflicts and 'Khûlâ' Registered in Sharia courts in Jordan between 2011 -2017.



- The percentage of legal cases of 'Khûlâ' compared to the total cases of divorce
- The percentage of legal cases of discord and conflict between the spouses compared to the total cases of divorce

It can be noted that after the ratification of Jordan's Family Law No. 36 of 2010, the percentage of marital discord and conflict cases increased from %4.5 in 2010 to reach %16 in 2017. Conversely, the percentage of cases depending on 'Khûlâ' decreased

from %10 in 2010 to %4.5 in 2017. In pervious Family Law No. 61 of 1976, when a needy wife was facing spousal abuse, '*Khulâ*' was an impossible choice because she must pay back her dowry to the husband. This may justify why many wives did not prefer to end to their marriage contract based on *Khulâ*. This also gives logical justifications for the decrease in the number of legal cases of '*Khulâ*' in the previous family law. In other words, '*Khulâ*' as an option was available only to well-off wives who face marital abuse. As a result, '*Khulâ*' was a major impediment to wives to getting rid of a miserable marital relationship.

The main reason lying behind the increase in the cases of marital discord and conflict is that Jordan's Family Law No. 36 of 2010 have simplified and facilitated legal methods of proving marital abuse among spouses. Legal article No (126) also expand the concept of marital discord and conflict to include not only physical abuse but also psychological. Thus, it has become easy for the wife to sue her husband for marital abuse or vice versa. Comparing to previous Family Law No. 61 of 1976, it was difficult in practice to prove marital abuse because it was limited only to testimony based on very close visual observation for eyewitness. Psychological abuse was not also seen as a legal evidence for proving marital abuse. Dr. Ashraf Al-Omari, who is a legal advisor to Supreme Judge Department, said.

The Findings of the Present Study:

As evident from the above critical examination of determining the percentage of marital abuse in spousal discord and conflicts cases, the present study has come with a number of key findings as follows:

Firstly, according to Four Islamic Schools of thought, namely *Hanafi*, *Mālikī*, *Shafi'i* and *Hanbali*, the major real task of the two Sharia arbitrators is to make every effort and scrupulously strive to reconcile the husband with his wife. The two Sharia arbitrators do also not have the legal right to determine the percentage of marital abuse in marital discord and conflict cases.

Secondly, based on the above point, Article No. 126 of Jordan's Family Law No. 15 of 2019 which enable legally the two Sharia arbitrators to determine the percentage of marital abuse in marital discord and conflict cases does not comply with Four Islamic Schools of thought.

Thirdly, there is a considerable disagreement among Fiqh jurists about the legal capacity and powers of the two Sharia arbitrators to separate the spouses. The adopted opinion of *Hanafi* and *Shafi* and *Hanbali* Schools of thoughts, the two Sharia arbitrators don't have the legal right to separate between disputing spouses.

Fourthly, based on the above point, Article No. 126 of Jordan's Family Law No. 15 of 2019 which gives the two Sharia arbitrators the legal right to make their decision to separate the husband from his wife does not correspond to the *Fiqh* trend of the majority of Four Islamic Schools of thought.

Fifthly, the prompt and deferred dowry is the wife's inalienable right in the Holy Quran and *Sunnah* as they are the main and basic sources of Islamic legislation. The Four Islamic Schools of Thought confirms also that the wife has the right to her dowry under a certain *Fiqh* conditions. Thus, Article No. 126 of Jordan's Family Law No. 15 of 2019 impacts considerably the wife's right to her dowry in marital discord and conflicts cases by deterring what is known as marital abuse percentage.

Sixthly, Article No. 126 of Jordan's Family Law No. 15 of 2019 extends the concept of marital abuse to include poor morals and bad behaviour of any one of spouses. This legal article gives also the wife more flexible options to end her marriage based on the issues of marital discord and conflict. This can justify why the rates of divorce increased steadily over the past ten years in Jordan.

Seventhly, official statistics issued by Supreme Judge Department show that there has been a significant increase in the rates divorce based on marital discord and conflicts cases. This significantly impacts the wife's right to her dowry.

The Main Recommendation of the Present study

The researcher firmly believes that Article No. 126 of Jordan's Family Law No. 15 of 2019 which enable legally the two Sharia arbitrators to determine the percentage of marital abuse in marital discord and conflict must be reviewed carefully to be more compatible with the guidance of the Holy Quran and the *Sunnah*. The major real task of the two Sharia arbitrators should be limited to make conscious effort to reconcile the husband with his wife to be in harmony with the Four Islamic Schools of Thought's points of view. The researcher recommends that Article No. 126 of Jordan's Family Law No. 15 of 2019 should be amended to enhancing the rights of women and reducing the rates of divorce.

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