Dispelling Discord Regarding Divorce Compensation (*Mut'at al-Ṭalāq*):

A Comparative Critical Study

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Contents

Introduction

Praise be to Allah, the Lord of the worlds, and may blessings and peace be upon our master Muhammad, his family, and his companions. To proceed:

Among the issues that have been widely debated in modern statutory laws and judicial systems is the question of what a woman deserves after divorce in terms of maintenance or financial compensation. The forms of such compensation vary: some are explicitly prescribed in Islamic law, such as *mutʿaht al-muṭallaqah* (a consolatory gift for the divorced woman); some are practiced in Western legal systems, such as the system of alimony; and some are practiced in certain Arab legislations, such as the idea of *taʿwīḍ al-ṭalāq al-taʿassufī* (compensation for arbitrary divorce).[1]

This paper has come to examine the fatwa presented by Dr. Hatem al-Haj, a member of the Fatwa Committee at the Assembly of Muslim Jurists of America, concerning the higher objective or purpose (*maqṣid*) of *mutʿaht al-muṭallaqa* in Islamic law. Dr. Hatem concluded in his study that the purpose of *mutʿah* is not merely to alleviate psychological distress, console the woman, and soothe her after divorce, but that it is broader and more comprehensive. He argues it should serve as an economic solution that provides a guarantee for the woman's future livelihood, preserves her dignity, protects her from begging and humiliation, and secures her material stability. The aim is to reassure the woman about staying in her home to care for her family, husband, and children, by guaranteeing her that if divorce occurs after years of marriage, she will not face financial trouble, since there will be compensation safeguarding her from material need.[2]

Based on this, what Dr. Hatem al-Haj has concluded raises significant questions: Is what he has done a case of *taḥqīq al-manāṭ* (verification of the operative cause), or is it rather a *takhrīj manāṭ* (derivation of new operative causes) and the designation of reasons that go beyond what the Sharīʿa has established and what the jurists have derived? And can some contemporary applications employed by civil courts be included within the concept of *mutʿah sharʿiyya*?

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[1] *"Compensation for arbitrary divorce"* is the payment of a court-assessed financial substitute to a woman whose husband divorced her without a reasonable cause, or without a legally recognized Sharʿī justification, as redress for her harm and compensation for her. Dr. Anwar al-Shaltuni, *al-Mutʿa wa al-Taʿwīḍ fī al-Ṭalāq: Dirāsa Muqārana bayna al-Fiqh wa al-Qānūn – Qānūn al-Aḥwāl al-Shakhṣiyya al-Urdunī*, *The Jordanian Journal of Islamic Studies*, Āl al-Bayt University, vol. 10, no. 1, 2014, p. 263.

[2] Hatem al-Haj, *"Taghayyur al-Aḥwāl wa al-ʿAwāʾid wa Atharuhu ʿalā al-Fatwā fī Aḥkām al-Usra maʿa Taṭbīqāt fī al-Qiwāma wa Mutʿat al-Ṭalāq"*, paper presented at the 20th Imams' Conference, American Assembly of Muslim Jurists, Houston – USA, 2024, p. 36.

To answer these questions, it is first necessary to clarify the reality of *mutʿaht al-muṭallaqa* in Islamic law, determine its amount, its legal purpose, and then conduct a precise comparison between it and the financial compensations applied in statutory and legislative systems.

The Meaning of *Mutʿah*: Linguistically and Technically

The root letters mīm–tāʾ–ʿayn indicate benefit.[3] As for the technical definition, Ibn ʿArafa al-Mālikī said: it is what the husband is commanded to give to his wife upon divorcing her.[4] Al-Dardīr defined it as what the husband gives in addition to the dowry, to console her broken heart due to the pain of separation.[5] Shaykh al-Islām Zakariyyā al-Shāfiʿī defined it as: a term for the money a man must give his wife when he separates from her.[6] Thus, it designates what the husband gives the divorced woman by way of honor, to relieve the grief of separation.

The Purpose of Divorce *Mutʿah*

It appears from the jurists' definitions that the purpose and legislative intent of *mutʿah* is consoling the wife. Al-Dusūqī, in his *ḥāshiya* on the *Sharḥ al-Kabīr*, said: "His saying 'to console her' means from the pain caused by separation."[7] Ibn Shās, and as transmitted by al-Mawwāq, said it is to console the woman's heart from the calamity of divorce.[8] Al-Khirshī said *mutʿah* is what the husband gives his divorced wife to relieve the pain caused by separation.[9] ʿAlī Abū al-Ḥasan, in *Kifāyat al-Ṭālib al-Rabbānī*, after clarifying the ruling of *mutʿah*, stated that it is "a consolation for separation and a soothing of her spirit." Al-ʿAdawī al-Ṣaʿīdī explained in his supercommentary on this point that a woman who seeks *khulʿ* does not receive *mutʿah* because she herself gave up wealth in exchange for separation, due to her aversion toward him, thus there is no pain to be relieved.[10]

Likewise, Shaykh al-Islām Zakariyyā said: "For the grief (*īḥāsh*), *mutʿah* is due." Al-Ramlī explained the grief, stating: "because divorcing her indicates a defect, reducing others' desire for her, so we compensated that with *mutʿah*."[11] Al-Kāsānī (Ḥanafī) said that the Sharīʿa

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[3] *Muʿjam Maqāyīs al-Lugha*, vol. 5, p. 293.
[4] *Sharḥ Ḥudūd Ibn ʿArafa*, p. 183.
[5] *Ḥāshiyat al-Ṣāwī ʿalā al-Sharḥ al-Ṣaghīr = Bulghat al-Sālik li-Aqrab al-Masālik*, vol. 2, p. 616.
[6] *Asnā al-Maṭālib fī Sharḥ Rawḍ al-Ṭālib*, vol. 3, p. 219.
[7] *al-Sharḥ al-Kabīr* by al-Shaykh al-Dardīr with the *Ḥāshiya* of al-Dusūqī, vol. 2, p. 425.
[8] *ʿAqd al-Jawāhir al-Thamīna fī Madhhab ʿĀlim al-Madīna*, vol. 2, p. 485; *al-Tāj wa al-Iklīl li-Mukhtaṣar Khalīl*, vol. 5, p. 411.
[9] *Sharḥ al-Khirshī ʿalā Mukhtaṣar Khalīl – with the Ḥāshiya of al-ʿAdawī*, vol. 4, p. 87.
[10] *Ḥāshiyat al-ʿAdawī ʿalā Kifāyat al-Ṭālib al-Rabbānī*, vol. 2, p. 89.
[11] *Asnā al-Maṭālib fī Sharḥ Rawḍ al-Ṭālib*, vol. 3, p. 220.

prescribed *mutʿah* as a gift for the wife, to console her heart for what she suffered of the grief of separation by losing the blessing of marriage.[12]

Some jurists, however, held that divorce *mutʿah* is without a discernible cause (*ghayr muʿallalah*). Al-Dusūqī transmitted from Ibn Saʿdūn in *Takmīl al-Taqyīd* that saying "*mutʿah* is for consolation and relief" is objectionable, since *mutʿah* might increase her grief by reminding her of her husband's good companionship. **Thus, it seems it was prescribed without a cause**. Ibn al-Qāsim said: if he did not give her *mutʿah* until she died, she could inherit from him, which indicates it is not for consolation.[13] Thus, *mutʿah* would be a purely devotional ruling (*taʿabbudī*).

Therefore, the result is: either we say that divorce *mutʿah* is causeless and purely devotional, or that it has a cause, which is to console the woman, ease her grief, and relieve her loneliness. In either case, whether with or without a cause, it is not an economic solution prescribed to prevent future financial harm to the woman, nor is it part of her financial entitlements as if the relationship were a business partnership. Nor is it a punishment for the husband for divorcing his wife—for how could it be a punishment when the Sharīʿa itself opened the door of divorce and gave him that right, even if misusing it may be sinful?

The Amount of Divorce *Mutʿah* in the Four Schools

One might ask: why research the amount of *mutʿah* in the madhhabs when this paper is not a comparative fiqh study?
The answer: this comparison clarifies the reality of divorce *mutʿah* and its Sharʿī limits, and whether the large financial sums proposed by some modern scholars—amounting to hundreds of thousands—can be considered part of *mutʿah*, or are beyond its scope and intent.

Ḥanafīs and Shāfiʿīs

No textual evidence fixes the amount of *mutʿah*. The Qurʾān stipulates that it should be according to the husband's means, "Let them receive provision according to the means of the wealthy, and according to the means of the poor, a provision in fairness" (Q. 2:236). Jurists differed over whose condition is considered. The Ḥanafīs (in their relied-upon opinion) and Shāfiʿīs held that the judge considers both spouses' situations. They set *mutʿah* at a cloak, headcover, and wrap, not exceeding half the *mahr al-mithl* (equivalent dowry), even if the husband is wealthy, since *mutʿah* is its substitute. If the two are equal in means, *mutʿah* is due, as it is a Qurʾānic obligation. If half the equivalent dowry is less than *mutʿah*, the lesser is due, provided it is not below five dirhams, even if the husband is poor.

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[12] *Badāʾiʿ al-Ṣanāʾiʿ fī Tartīb al-Sharāʾiʿ*, vol. 4, p. 11.
[13] *al-Sharḥ al-Kabīr* by al-Shaykh al-Dardīr with the *Ḥāshiya* of al-Dusūqī, vol. 2, p. 425.

Some, like al-Karkhī, considered the wife's material background or condition; al-Qudūrī adopted this, while al-Sarakhsī considered the husband's means, which was the view authenticated in *al-Hidāyah*. The Shāfiʿīs mentioned that consideration is given to both spouses' status—what is fitting for his wealth and her lineage and qualities. Some said it should be according to the husband (follwoing the Qurʾānic verse), others according to the wife (since it resembles the dowry). Others said it should not be less than what is valid as a dowry. It is recommended not to make it less than thirty dirhams, and preferable not to exceed half the equivalent dowry, but if it does or exceeds, it is valid. Al-Bulqīnī said it does not exceed the equivalent dowry obligatorily, unless by agreement.

Mālikīs and Ḥanbalīs

Mālikīs and Ḥanbalīs considered *mutʿah* based on the husband's means alone, unlike maintenance (*nafaqah*), which is based on both spouses' conditions. Ḥanbalīs stated that the maximum *mutʿah* is a servant for a wealthy man, and the minimum is clothing for a poor man—a cloak and headcover, sufficient for a woman's prayer. They based this upon Ibn ʿAbbās' statement: "The highest *mutʿah* is a servant, then beneath that material payment for sustenance (*nafaqah*), then beneath that clothing."[14]

The Role of Custom in Determining *Mutʿah*

Ḥanafī texts mention that some objected to limiting *mutʿah* to three garments, saying: that was valid in their lands, but in ours women wear more, so more is due—such as an extra wrap and headcover. Some modern scholars built on this, appealing to custom (*ʿurf*) to justify awarding women hundreds of thousands in wealthy contexts. Dr. Hatem al-Haj said: "The Sharīʿah did not fix *mutʿah*, so the truth is with those who did not fix it. Whoever did, we interpret it as 'the customary known amount in their time.' We have the verse: 'Provide for them, according to the wealthy his means, and according to the poor his means, a provision in fairness' (Q 2:236). So, either the spouses agree, or they litigate, and the judge rules according to what is customary in that time, place, and condition, considering the husband's means, the circumstances of the divorce, and the length of the marriage."[15]

This understanding is invalid. For although the scholars acknowledged the role of custom (*ʿurf*) in such matters not specified by the Sharīʿa, it remains confined within the reality of

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[14] *Ḥāshiyat Ibn ʿĀbidīn = Radd al-Muḥtār*, (Halabī ed.), vol. 3, p. 110; *al-Sharḥ al-Kabīr* by al-Shaykh al-Dardīr with the *Ḥāshiya* of al-Dusūqī, vol. 2, p. 425; *Sharḥ al-Zurqānī ʿalā Mukhtaṣar Khalīl* with the *Ḥāshiya* of al-Bannānī, vol. 4, p. 262; *Sharḥ al-Kharashī ʿalā Mukhtaṣar Khalīl* with the *Ḥāshiya* of al-ʿAdawī, vol. 4, p. 87; *Ḥāshiyat al-ʿAdawī ʿalā Kifāyat al-Ṭālib al-Rabbānī*, vol. 2, p. 89; *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī Alfāẓ al-Minhāj*, vol. 4, p. 399; *Sharḥ al-Muntahā* by Ibn al-Najjār, vol. 9, p. 228; *Sharḥ al-Muntahā* by al-Buhūtī (ʿĀlam al-Kutub ed.), vol. 3, p. 27; *al-Mawsūʿa al-Fiqhiyya al-Kuwaytiyya*, vol. 36, p. 96.

[15] Hatem al-Haj, *"Taghayyur al-Aḥwāl wa al-ʿAwāʾid wa Atharuhu ʿalā al-Fatwā fī Aḥkām al-Usra maʿa Taṭbīqāt fī al-Qiwāma wa Mutʿat al-Ṭalāq"*, 20th Imams' Conference, American Assembly of Muslim Jurists, Houston – USA, 2024, p. 52.

the matter itself. It is not permissible, under the pretext of custom, to redefine *mutʿah* and turn it into financial compensation lasting for decades, or into a share of the husband's savings accumulated during the years of marriage. This is a distortion of the true nature of divorce *mutʿah*. For this reason, the scholars, after mentioning such statements, emphasized that the effect of custom is only in considering what clothing a woman wears when going out according to each country. **Thus, the role of custom is in determining the amount within the true nature of *mutʿah*, not absolutely**. Hence, they said: if both spouses are wealthy, she is entitled to the finest garments; if both are poor, to the least; and if they differ, then to the middle. Reflect on this.[16]

Custom and the Change of Rulings

Though custom plays a role in many rulings, especially in what is unregulated or ambiguous, this is not absolute. It has conditions. One condition is that the custom not be corrupt (*ʿurf fāsid*). Otherwise, it corrupts religion. The Prophet ﷺ said: "Whoever introduces into our matter that which is not of it—it is rejected."[17]

Working with corrupt custom would annul the Sharīʿa in its own name. The gravest corruption is consuming others' wealth unjustly, as seen in some laws granting the divorced woman half the man's savings without right. Thus, deeming every widespread practice as valid custom will lead to distortion of religious teachings. Religion, as a divine ordinance, rules over custom, not vice versa.

As for the saying "rulings change with changing times," it must not be taken literally. What is established by Qurʾān, Sunnah, or qiyās remains so long as the Qurʾān and Sunnah remain. If times could annul rulings, the Sharīʿa would have been effaced long ago. Instead, the phrase means: rulings tied by the Lawgiver to people's customs and habits change with these changing customs and habits. This is based on the necessity of following Allah's ruling in that matter; so it is clear that this is nothing but a continuation of the ruling, and what may appear as change when its circumstances change is in fact the correct application of Allah's ruling.[18]

Custom is like a condition in contracts. The legal maxim states, "what is established by custom is like a stipulated condition." But only if it does not contradict Sharīʿa. Otherwise, it is invalid, as the Prophet ﷺ said: "Muslims are bound by their conditions, except a condition

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[16] *Ḥāshiyat Ibn ʿĀbidīn = Radd al-Muḥtār* (Halabī ed.), vol. 3, p. 110.
[17] Bukhārī (2697) and Muslim (1718).
[18] Muḥammad Saʿīd Ramaḍān al-Būṭī, *Ḍawābiṭ al-Maṣlaḥa fī al-Sharīʿa al-Islāmiyya*, Beirut: Muʾassasat al-Risāla, p. 412.

that makes unlawful lawful or lawful unlawful."[19] Thus, the consideration of custom is conditional, not absolute.[20]

In conclusion: only valid custom is recognized, and only within the defined scope of the thing's reality and purpose. Custom in *mutʿah* differs from custom in maintenance, and both differ from custom in dowries. Each has its specific reality, which cannot be transgressed. Otherwise, we are speaking of things outside their realm.

Verification of the Operative Cause

Dr. Hatem al-Haj said: the mufti's work involves *takhrīj al-manāṭ* ***(*derivation of new operative causes**), *tanqīḥ al-manāṭ* (**removing extraneous or irrelevant operative causes**), and *taḥqīq al-manāṭ* (**verification of the operative cause**). The last means applying the established ruling to the proper reality. If the *manāṭ,* or operative cause*,* changes, the fatwa changes, though not the ruling itself. This is not changing the ruling but the fatwa, since the jurist is choosing the best application for the case. *Taḥqīq al-manāṭ* is an ongoing form of ijtihād until the end of time, as al-Shāṭibī stated.[21]

The Question: Is Dr. Hatem's view *taḥqīq al-manāṭ* or *takhrīj al-manāṭ*?

We do not deny that a ruling founded upon custom changes with it, and that this is *taḥqīq al-manāṭ*. The mistake, however, is that while they claim to be practicing *taḥqīq al-manāṭ*, in reality they are designating new operative causes and annulling those set by the scholars. This is not *taḥqīq al-manāṭ*, which is: establishing the cause of the original ruling in a branch, or affirming the application of a Sharʿī principle to some particulars, or verifying the scope of a general or absolute text in its individuals.

Rather, what they are doing is *takhrīj al-manāṭ*: deriving the cause of a ruling established by text or consensus, through the recognized methods of reasoning. This belongs to the highest level of scholar, the unbound independent jurist (*mujtahid muṭlaq*), not the madhhab-bound follower. Moreover, the scholars established that the purpose of divorce *mutʿah* is consoling the woman and soothing her heart, not serving as an economic plan for her future. Once the marital tie is dissolved, their financial destinies necessarily part ways.

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[19] Bukhārī (2721) and Muslim (1504).

[20] Muḥammad al-Tāwīl, *Ishkāliyat al-Amwāl al-Muk'tasaba Muddat al-Zawjiyya: Ruʾya Islāmiyya*, Photocopies of the Association of Scholars, Graduates of al-Qarawiyyīn University in Fez, pp. 39, 41, 71.

[21] Hatem al-Haj, *"Taghayyur al-Aḥwāl wa al-ʿAwāʾid wa Atharuhu ʿalā al-Fatwā fī Aḥkām al-Usra maʿa Taṭbīqāt fī al-Qiwāma wa Mutʿat al-Ṭalāq"*, 20th Imams' Conference, American Assembly of Muslim Jurists, Houston – USA, 2024, pp. 14, 24.

The Muslim community (*Ummah*) has acted on this understanding, generation after generation, from the Prophet's ﷺ time until today. Whoever wishes to assign a new cause to the ruling cannot claim this as *taḥqīq al-manāṭ*. Rather, he must employ the recognized methods of *takhrīj al-manāṭ*, which belongs to the *mujtahid mutlaq*. What we have here, then, is not the *taḥqīq al-manāṭ* that endures until the Day of Judgment.

Compensation for Arbitrary Divorce

Before defining the compound term, we must define its constituent parts. I say: **compensation (*taʿwīḍ*)**—linguistically, from ʿiwaḍ, meaning a substitute; you say, "*ʿawaḍtuhu taʿwīḍan*" when you give someone something in place of what was lost; and *taʿawwaḍa minhu* and *iʿtaāḍa* mean: he took a substitute. Technically: it is the payment of what is due of a financial substitute because of causing harm to another.[22]

As for **divorce (*ṭalāq*)**, linguistically it is release and removing the bond; its verbal noun is *taṭlīq*. Technically: it is lifting the marriage tie, immediately or ultimately, by a specific utterance. Some said: it is a legal quality that lifts the husband's permissibility of enjoyment with his wife.[23]

As for **arbitrariness (*taʿassuf*)**, linguistically it is from (*ʿasafa*): proceeding without guidance, embarking upon a matter without deliberation, traversing a desert aimlessly—hence *taʿassuf*.[24] Technically: it is the misuse of a right in a manner that leads to harm to another.[25]

Accordingly, **"compensation for arbitrary divorce"** may be defined as: the payment of a court-assessed financial substitute to a woman whom her husband divorced without a reasonable cause or without a recognized Sharʿī justification, as redress for her harm and compensation for her.[26]

Before comparing "compensation for arbitrary divorce" and the "consolatory gift for the divorced woman (*mutʿaht al-muṭallaqa*)" in terms of reality, purpose, and ruling, let us briefly consider the ruling of divorce and its legitimacy according to the scholars.

The Ruling of Divorce

The jurists have unanimously agreed that divorce is legislated, and that forbidding it is invalid—just as Imām Ibn al-Munḏir said in *al-Ishrāf ʿalā Madhāhib al-ʿUlamāʾ*: "The Book and the Sunna indicate that divorce is permissible and not prohibited. We have transmitted

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[22] *Muʿjam al-Muṣṭalaḥāt wa al-Alfāẓ al-Fiqhiyya*, vol. 1, p. 477.
[23] *Muʿjam al-Muṣṭalaḥāt wa al-Alfāẓ al-Fiqhiyya*, vol. 2, p. 430.
[24] *al-ʿAyn*, vol. 1, p. 339.
[25] Wahba al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9, p. 7064.
[26] Dr. Anwar al-Shaltūnī, *al-Mutʿa wa al-Taʿwīḍ fī al-Ṭalāq: Dirāsa Muqārana bayna al-Fiqh wa al-Qānūn – Qānūn al-Aḥwāl al-Shakhṣiyya al-Urdunī*, *The Jordanian Journal of Islamic Studies*, Al al-Bayt University, vol. 10, no. 1, 2014, p. 263.

numerous reports indicating the permissibility of divorce, and there is no sound report forbidding or preventing it."[27]

The consensus on this was transmitted by many scholars across all madhhabs, among them:

1. Ibn Ḥazm in *Marātib al-Ijmāʿ*: "They agreed that the divorce by a sane, adult Muslim—who is not intoxicated, nor coerced, nor angry [to the point of loss of control], nor coerced, nor under interdiction, nor ill—of his wife whom he married with a valid marriage is permissible."[28]

2. Ibn al-Mawṣilī (Ḥanafī) said: "It is a matter legislated by the Book, the Sunna, and consensus … and on its occurrence consensus has been concluded."[29]

3. Ibn ʿAbd al-Barr (Mālikī) said: "The Qurʾān has come permitting divorce, and the Messenger of Allah ﷺ divorced some of his wives. This is a matter over which there is no disagreement."[30]

4. Imām al-Qurṭubī (Mālikī) in his Tafsīr: "Thus the Book, the Sunna, and the consensus of the Umma indicate that divorce is permissible and not prohibited."[31]

5. Imām al-Māwardī (Shāfiʿī): "The basis for the permissibility of divorce is the Book, the Sunna, and the consensus of the Umma."[32]

6. Shaykh al-Islām Abū Yaḥyā Zakariyyā al-Anṣārī (Shāfiʿī), al-Khaṭīb al-Sharbinī (Shāfiʿī), Shihāb al-Dīn al-Ramlī, and others among the relied-upon Shāfiʿī texts: "Its basis, prior to consensus, is the Book … and the Sunna …"[33]

7. Al-Muwaffaq Ibn Qudāma (Ḥanbalī): "Divorce is the dissolution of the marriage bond. It is legislated, and the basis of its legislation is the Book, the Sunna, and consensus … and the people have unanimously agreed on the permissibility of divorce."[34]

8. Burhān al-Dīn Ibrāhīm b. Muḥammad b. Mufliḥ al-Maqdisī al-Ṣāliḥī (Ḥanbalī): "And there is consensus on its permissibility."[35]

9. Ibn al-Najjār (Ḥanbalī): "The Muslims have unanimously agreed on the permissibility of divorce."[36]

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[27] Ibn al-Mundhir, *al-Ishrāf*, vol. 5, p. 183.
[28] *Marātib al-Ijmāʿ*, p. 71.
[29] *al-Ikhtiyār li-Taʿlīl al-Mukhtār*, vol. 3, p. 121.
[30] Ibn ʿAbd al-Barr, *al-Tamhīd*, vol. 9, p. 336 (ed. Bashshār).
[31] al-Qurṭubī, *Tafsīr al-Qurṭubī = al-Jāmiʿ li-Aḥkām al-Qurʾān*, vol. 3, p. 126.
[32] *al-Ḥāwī al-Kabīr*, vol. 10, p. 111.
[33] *Fatḥ al-Wahhāb bi-Sharḥ Minhāj al-Ṭullāb*, vol. 2, p. 87; *Fatḥ al-ʿAllām bi-Sharḥ al-Iʿlām bi-Aḥādīth al-Aḥkām*, p. 552; *al-Ghurar al-Bahiyya fī Sharḥ al-Bahja al-Wardiyya*, vol. 4, p. 245; *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī Alfāẓ al-Minhāj*, vol. 4, p. 455; *Fatḥ al-Raḥmān bi-Sharḥ Zubad Ibn Ruslān*, p. 783.
[34] Ibn Qudāma, *al-Mughnī*, vol. 10, p. 323.
[35] *al-Mubdiʿ Sharḥ al-Muqniʿ*, vol. 8, p. 105.
[36] Ibn al-Najjār, *Sharḥ al-Muntahā*, vol. 9, p. 342.

10. Al-ʿAllāma al-Buhūtī (Ḥanbalī): “And they have unanimously agreed on its permissibility.”[37]

11. Prof. Dr. Wahba al-Zuhaylī: “People have unanimously agreed on the permissibility of divorce, and reason supports it, for the state between the spouses may become corrupt, such that remaining in the marriage becomes pure corruption and harm—by imposing on the husband maintenance and housing, and imprisoning the woman within bad companionship and perpetual dispute without benefit—so it was appropriate to legislate what removes the marriage, to remove the corruption resulting from it.”[38]

Is the default ruling of divorce permissibility or prohibition?

After considering these transmitted consensuses, there is no room to say it is prohibited, for consensus has been concluded on its legislation and permissibility, and prohibition contradicts permissibility.

Yet it may be said: we find in the words of some scholars, such as the Ḥanafīs and a narration from Imām Aḥmad, that the default ruling of divorce is prohibition. How do we understand their intent considering this definitive consensus?

To answer: either we say that the scholars’ statements oscillating between permissibility and prohibition refer to the same locus—thus affirming a contradiction in their words, which is far-fetched—or we say their statements do not refer to one and the same locus. Thus, the definitive consensus stands on the legislation and permissibility of divorce in principle, while prohibition is restricted to a particular aspect and circumstance—namely, **divorce without any cause calling for it**. The presence of such an aspect negates generality and differs from it, and so it may have its own ruling. This is the apparent meaning of the scholars’ words, for they divided divorce into the five legal valuations: obligation, recommendation, permissibility, dislike, and prohibition—depending on the circumstance.

Accordingly, there is no disagreement about the legislation and permissibility of divorce as a principle—that is a matter of consensus. The disagreement concerns a specific case: divorce when the marital state is sound and there is no need for divorce. In this scenario, some scholars held it is disliked *(al-karāhah*), while others held it is prohibited (*al-ḥaẓr*).

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[37] *Kashshāf al-Qināʿ*, vol. 5, p. 232 (ed. Muṣīlḥī).

[38] Wahba al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9, p. 6874.

Did the Ḥanbalīs prefer Aḥmad's narration on the dislike of need-less divorce, or did they prefer prohibition?

It appears that divorce, when the marital state is sound—without need or accepted cause—is disliked in the Ḥanbalī madhhab. Over the ages, the madhhab's scholars preferred the narration of dislike over that of prohibition.

Foremost among those who clarified this was al-ʿAllāmah al-Mardāwī in *al-Inṣāf fī Maʿrifat al-Rājiḥ min al-Khilāf ʿalā Madhhab Aḥmad*. This book is among the most important in the madhhab; its author intended to set forth what is correct, famous, practiced, supported, and adopted by most Ḥanbalīs, and to correct the narrations and opinions mentioned by his predecessors such as al-Muwaffaq Ibn Qudāmah. He clarified that the Ḥanbalīs' mention of multiple narrations is not because the disagreement is strong, but merely to report the existence of disagreement in general.[39]

Thus the book became, as Ibn Badrān al-Ḥanbalī said in *al-Madkhal*, a "correction of most of the madhhab's books." He then said: "In short, this virtuous scholar deserves to be called the renewer (mujaddid) of Aḥmad's madhhab in both uṣūl and furūʿ."[40] He also said of him: "The one who has refined the madhhab's uṣūl and furūʿ."[41]

Al-Mardāwī said in *al-Inṣāf*: "His statement: 'It is permissible when there is need for it, and disliked without need. And it is narrated that it is prohibited. And it is recommended if remaining in the marriage entails harm.' Know that divorce falls under the five legal valuations: permissibility, recommendation, dislike, obligation, and prohibition. The permissible: is when there is need for it—due to the woman's bad character or bad companionship, likewise being harmed by her without obtaining the intended benefit—so in this case divorce is permissible without any disagreement that I know of. The disliked: is when there is no need—this is the correct view in the madhhab, and this is held by our Ḥanbalī compatriots, and affirmed in *al-Wajīz* and others; it is preferred in *al-Khilāṣa*, *al-Mughnī*, *al-Hādī*, *al-Sharḥ*, *al-Naẓm*, the two *al-Riʿāyatayn*, *al-Ḥāwī al-Ṣaghīr*, *al-Furūʿ*, and others. And it is narrated that it is prohibited; both were stated absolutely in *al-Hidāya*, *al-Madhhab*, *Masbūk al-Dhahab*, and *al-Mustawʿib*. And it is narrated that it is permissible—thus neither disliked nor prohibited."[42]

It is evident from al-Mardāwī's words that dislike is the preferred and relied-upon view in the Ḥanbalī madhhab, whereas prohibition is weaker and merely reported; hence his phrase "both were stated absolutely."

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[39] *al-Inṣāf fī Maʿrifat al-Rājiḥ min al-Khilāf*, vol. 1, p. 4 (ed. al-Fiqqī).
[40] Ibn Badrān, *al-Madkhal ilā Madhhab al-Imām Aḥmad*, p. 436.
[41] Ibn Badrān, *al-Madkhal ilā Madhhab al-Imām Aḥmad*, p. 462.
[42] *al-Inṣāf fī Maʿrifat al-Rājiḥ min al-Khilāf*, vol. 8, p. 429 (ed. al-Faqī).

In any case, the discussion—whether we say prohibition or dislike—concerns a specific case: when divorce occurs without need. Yet we find that Shaykh Hatem al-Haj, after mentioning the scholars' views on the ruling of divorce and its categories, includes wording whose apparent sense suggests that the ruling of divorce is absolute prohibition; he then opens the door to deducing from that the possibility of fining the divorcing husband. He says at the end of his study: "If it becomes clear that the default ruling of divorce is prohibition, and that the one who commits it is sinful, then what follows from that in worldly rulings—may the divorcer be fined for his arbitrariness in exercising his right?"[43] Observe how he stated the prohibition without restricting it to the case of being without need or acceptable cause—even though he had already mentioned that divorce can take any of the five legal valuations.

It is true that some scholars used the expression "the default of divorce is prohibition," but the context of deriving rulings and applying them to cases requires precise wording and consideration of the relevant aspects; restricting the prohibition to divorce without need or acceptable cause differs from stating prohibition absolutely. The restricted (*muqayyad*) is not the same as the absolute (*muṭlaq*), and the aspect here is significant and must not be overlooked.

For those who say the default of divorce is prohibition—may financial compensation to the woman be derived from that or not?

It is not valid to impose financial compensation to the woman—even on the view that the default of divorce is prohibition—for the following reasons:

First: Those who said the default is prohibition restricted permissibility to the presence of need due to inability to maintain good companionship when characters are incompatible. Since need is an inward matter, its outward indicator was set as pronouncing divorce during the period in which desire is renewed—i.e., a purity (*ṭuhr*) free of intercourse. Whenever divorce occurs in such a purity, that is taken as evidence of the existence of need. Hence, they permitted a single revocable divorce for the need and said there is no need for more than that. Thus, divorce spaced over successive purities is permissible even according to those who said the default is prohibition; accordingly, it is invalid to obligate the husband with financial compensation, for there is no compensation for a permissible act.[44]

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[43] Hatem al-Haj, *al-Aḥwāl wa al-ʿAwāʾid wa Atharuhu ʿalā al-Fatwā fī Aḥkām al-Usra: maʿa Taṭbīqāt fī al-Qiwāma wa Mutʿat al-Ṭalāq*, p. 49.

[44] *al-ʿInāya Sharḥ al-Hidāya – on the margin of Fatḥ al-Qadīr* (Ḥalabī ed.), vol. 3, p. 468; *al-Jawhara al-Nayyira ʿalā Mukhtaṣar al-Qudūrī*, vol. 2, p. 31; *al-Baḥr al-Rāʾiq Sharḥ Kanz al-Daqāʾiq wa Minḥat al-Khāliq wa Takmila al-Ṭūrī*, vol. 3, p. 258.

Second: If it is said the default is prohibition, then its occurrence is only permissible for a need. This need may be psychological and not subject to proofs; and the Lawgiver links rulings to outward, regulated attributes—not to hidden matters that cannot be regulated. The need may also be something that must be concealed and preserved from being exposed in court because of the scandalizing of private married life; such scandalization dwarfs any material consideration. Thus obligating the husband with compensation is invalid.[45]

Third: Among the strongest proofs for the invalidity of compensation is the practical consensus of the Umma. For centuries, divorce has been effected despite material and moral harm reaching the wife, and none of the scholars said it is obligatory to impose financial compensation upon the husband. Thus the judiciary has operated—from the Prophetic era, through the Companions and Followers—accordingly, and the Umma does not unite upon misguidance; Ibn ʿArḍūn's fatwa is preceded by this consensus.[46]

Fourth: The Sharīʿa has prohibited taking a Muslim's wealth without right. Allah Most High said: *"O you who believe, do not consume one another's wealth unjustly"* [Q. 4:29]. Compensation is a form of consuming people's wealth; it is not permissible except where a text specifies it. Since no text has specified this here, the matter remains on the basis of prohibition.

Fifth: Neither the Qurʾān nor the Prophetic Sunna established the principle of compensation in the case of divorce. This cannot rightly be counted among unrestricted "suitable interests" (*maṣāliḥ mursalah*). Details will follow.

Sixth: Obliging the husband to pay compensation practically obliges him to remain with a wife he dislikes—contradicting the purposes of marriage, which are founded upon tranquility, affection, and mercy.

Objection and Reply:
It may be said that compensation achieves deterrence and chastisement of husbands who misuse their right of divorce. The reply: legitimate deterrence is achieved through education and guidance, not by imposing a financial penalty that contravenes the Sharīʿa's objective of preserving wealth. Correcting a wrong by a greater wrong does not accord with the Sharīʿa's purposes; one does not repel the harm of divorce by committing the harm of unjustly consuming wealth.

Another Objection:
Some jurists analogized arbitrary divorce to the divorce of an invalid during a death-illness (*maraḍ al-mawt*) when he intends to deprive his wife of inheritance. They said: just as the

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[45] ʿUmar Ibrāhīm Ismāʿīl al-Majālī, "al-Taʿwīḍ ʿan al-Ṭalāq al-Taʿassufī wa Taṭbīqātuhu fī al-Maḥākim al-Sharʿiyya al-Urduniyya," *Majallat al-Baḥth al-ʿIlmī*, no. 53, year 19 (30 January 2024), p. 97. Cited from: al-Ḥamlīshī, *al-Taʿlīq ʿalā Qānūn al-Aḥwāl al-Shakhṣiyya*, p. 388.

[46] Muḥammad al-Tāwīl, *Ishkāliyat al-Amwāl al-Muk'tasaba Muddat al-Zawjiyya: Ruʾya Islāmiyya*, Photocopies of the Association of Scholars, Graduates of al-Qarawiyyīn University in Fez, pp. 11, 55. (This treatise is strong and useful in refuting the issue of *al-kadd wa al-siʿāya*.)

Lawgiver treated him contrary to his intent and established her right to inherit, so too the one who divorces arbitrarily should be treated contrary to his intent and obligated with compensation. The reply: this analogy is defective, for granting inheritance in death-illness is not compensation—it is a right established for her by Sharīʿa. One does not analogize that which is not established upon that which is.

Finally:
Sharīʿa has not neglected the woman's interest after divorce; rather, it established for her what removes hardship and harm—such as permitting her to remarry after the end of her waiting period so she may be in the care of a new husband, or obligating her guardian to maintain her if she does not remarry. It prescribed maintenance during the waiting period (*nafaqat al-ʿidda*) and *mutʿah*—and in this there is solace for the wife. It is not permissible, under the pretext of interest, to permit what Sharīʿa has forbidden of unjustly consuming people's wealth. Details on *istiṣlāḥ* will follow.

May *mutʿaht al-ṭalāq* be considered synonymous with what some Arab states oblige of compensation paid by the husband for arbitrary divorce?

The answer becomes apparent by examining each system's aims: legal compensation is based on the purpose of punishment and chastisement—something that has no basis in the ruling of Sharʿī *mutʿah*. Jurists state that *mutʿah* is an honor for the divorced woman, not a punishment for the divorcer; it falls under beneficence and piety, which Allah has commanded.

This accords with *mutʿah*'s legislative logic: it is a right for every divorced woman, paid to console her heart, soothe her spirit, and remove her distress and psychological harm—not a punishment for the man; punishment is only for a crime, and divorce in its essence is not a crime but a legitimate right of the divorcer, legislated by Allah and permitted when there is need.

Moreover, the *mutʿah* view realizes justice and virtue: it considers the husband's state of ease or hardship; it is a Sharʿī system with no scent of fines or punishment—a divine system grounded in mutual consent and beneficence, wherein the divorcer senses the meanings of reward, gift, and kindness. By contrast, the regime of compensation opens the door of litigation and inflames dispute between the spouses and their families, whereas *mutʿah* leads to honor and beneficence and preserves a measure of remaining goodwill.[47]

Accordingly, it becomes clear that one may not analogize between *mutʿah* for the divorced woman in Islamic fiqh and "compensation for arbitrary divorce," and, a fortiori, not with **alimony** in American law; for they differ essentially in several respects. **In terms of its reality**, alimony is defined as financial maintenance imposed by judicial order upon one

[47] Dr. Anwar al-Shaltūnī, *al-Mutʿa wa al-Taʿwīḍ fī al-Ṭalāq: Dirāsa Muqārana bayna al-Fiqh wa al-Qānūn – Qānūn al-Aḥwāl al-Shakhṣiyya al-Urdunī*, *The Jordanian Journal of Islamic Studies*, Al al-Bayt University, vol. 10, no. 1, 2014, p. 275.

spouse for the benefit of the other at separation or divorce, intended to aid in livelihood and to preserve a standard of living close to that during the marriage; its value and duration are determined by the recipient's need and the other party's ability to pay, considering factors such as the length of the marriage, the spouses' ages and incomes, and each party's conduct toward the other; the right to it may be forfeited if the separation was due to the claimant's adultery or desertion.[48]

Thus it is a continuing financial obligation and a legal duty imposed upon the husband. **Whereas the reality of *mutʿaht al-ṭalāq* in Islam** is a monetary gift or clothing given to the divorced woman once, at the time of divorce, by way of beneficence. **In terms of purposes**, *mutʿah* aims to console the divorced woman and soothe her spirit; it is not an economic solution, nor lifelong (or near-lifelong) support—unlike maintenance in American law. **In terms of assessment**, alimony's value depends on a cluster of criteria—notably: length of marriage; standard of living during marriage; the husband's income and financial capacity; the recipient's needs; and her employability and earning capacity. *Mutʿah*, by contrast, depends only on the husband's ease or hardship, with the judge perhaps taking local custom into account without departing from its nature as an honoring gift.

In sum: both alimony in American law and compensation for arbitrary divorce differ essentially from *mutʿaht al-ṭalāq* in Islamic fiqh. *Mutʿah* is neither subsistence maintenance nor an economic plan, nor a punishment for the man; rather, it is an honoring gift intended to console the divorced woman's heart.

What is the ruling on a woman taking these monies from the man?

After it has become clear that *mutʿat al-muṭallaqa* in its Sharʿī sense differs from American-law alimony and from "compensation for arbitrary divorce," and from other procedures that authorize a woman to take a large portion of a man's wealth, the question arises: **what is the ruling on a woman taking these monies from the man?**

Answer: It is not permissible, based on the sound proofs and decisive evidences from the Book, the Sunna, and the consensus of the Umma, as shown by the following:

First: The Exalted said: *"For men is a share of what they have earned, and for women is a share of what they have earned."* [Q. 4:32]—a clear text that men's earnings belong to men and women's earnings belong to women, each sex being exclusively entitled to its own earnings. The verse is general and includes husbands and wives and others. Even if it was

[48] *Georgia Code*, §19-6-1 (2020), *Alimony and Attorney's Fees Generally*, *Official Code of Georgia Annotated*. Accessed August 22, 2025.
Cornell Law School, *Legal Information Institute (LII)*, *Wex: Alimony*. Accessed August 22, 2025.

revealed for a specific cause, the consideration is for the generality of the wording, not the specificity of the cause, as established in uṣūl.

Second: Allah The Exalted said: *"man has only what he strives for."* (Q. 53:39); and He said: *"No soul earns [sin] except against itself."* (Q. 6:164); and He said: *"Allah does not burden a soul beyond its capacity; it will have [the consequence of] what [good] it has earned and it will bear [the consequence of] what [evil] it has incurred."* (Q. 2:286)
These verses are general with respect to every worldly and otherworldly earning, as Ibn Ḥazm stated; supported by the uṣūl principle that the generality of persons entails generality of circumstances, times, and places. They all indicate that each person's earning is confined to him- or herself, not shared by others. The wording employs restriction by negation and affirmation—"no soul earns except against itself," and "man has only what he strives for." With such restriction and emphasis, no one retains a claim to seize or share another's earnings—neither by virtue of marriage nor otherwise.[49]

Third: Among the evidences is what is known necessarily in religion: the prohibition of consuming people's wealth unjustly. The Exalted said: *"O you who believe, do not consume your wealth among yourselves unjustly, except that it be trade by mutual consent."* (Q. 4:29)

Fourth: It is established in the sound Sunna that he ﷺ said: "Every Muslim's blood, wealth, and honor are inviolable to [every] Muslim";[50] and he ﷺ said: "Indeed Allah has made your blood, your wealth, and your honor sacred—like the sanctity of this day of yours, in this month of yours, in this land of yours";[51] and he ﷺ said: "The wealth of a Muslim is not lawful [to another] except with his willing consent."[52] These texts are general for husbands and wives alike; they indicate that neither one's wealth is lawful for the other except with his or her free consent—and the husband is not freely consenting to the wife's sharing in his wealth and savings.

Fifth: Among the evidences, too, is what has been established by mass-transmitted meaning (tawātur maʿnawī) and practical consensus: that men divorced their wives in the time of the Prophet ﷺ, and it was never reported that a single divorced woman demanded from her husband the wealth he had amassed before or after marriage, nor that they divided his savings with him. Rather, each was given something to soothe her heart and console her—by way of honor and gift. The Prophet ﷺ never commanded that the divorced woman take what would sustain her against the vicissitudes of life until her death.

If it is said: Why not permit these procedures on grounds of *maṣlaḥah* (public interest), as Dr. Hatem al-Haj says—since reassuring the woman about her economic future in case of divorce would convince her to remain at home caring for her family, husband, and children;

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[49] Muḥammad al-Tāwīl, *Ishkāliyat al-Amwāl al-Muk'tasaba Muddat al-Zawjiyya: Ruʾya Islāmiyya*, Photocopies of the Association of Scholars, Graduates of al-Qarawiyyīn University in Fez, p. 4.
[50] Bukhārī (67) and Muslim (2564).
[51] Bukhārī (1739) and Muslim (1218).
[52] Bukhārī (2620) and Muslim (1532).

this preserves the family's religion, and preservation of religion is prioritized over other objectives, and is more emphatic than preserving the husband's wealth?[53]

The reply: *Istiṣlāḥ*—i.e., reasoning from interest—is limited to the *maṣlaḥah mursalah* (unrestricted public interest)[54], i.e., that for which there is no Sharʿī proof of consideration or cancellation. What we have here is not of that kind, because taking the husband's wealth without right is decisively prohibited by the foregoing proofs and constitutes unjust consumption of wealth. Accordingly, this is not a recognized interest but a *canceled* interest that the Lawgiver has nullified. Even if we conceded, for the sake of argument, that it is among *maṣāliḥ mursalah*—not proven as considered or canceled—there remains the condition that it not be an *imagined* interest that is outweighed by greater interests or entails harms.

Among the most prominent harms: this procedure would cause the husband to refrain from divorce—which Allah legislated as a relief from many problems—for fear of confiscation of his wealth. This would lead to falling into betrayals and forbidden relationships, or to the aggravation of marital problems for which the Lawgiver made the solution the legislated divorce.
Among its harms as well: it deters men from approaching marriage, encourages celibacy, makes them averse to married life, and turns it into a gateway to estrangement and corruption. Men's reluctance to marry inevitably leads to the spread of spinsterhood and widowhood among women, opening a wide door to forbidden relations for both sexes.
Among its harms, too: it kindles the fires of strife within homes over trivial—and perhaps contrived—pretexts, and prompts the use of lawful and unlawful means to provoke husbands and push them to divorce. Thus divorce would be transformed, by virtue of this ijtihād, from something feared as threatening a woman's future into something desired, an economic project bringing her wealth and money.

This is Allah's religion that His Messenger ﷺ conveyed to his Umma, upon which the Muslims—men and women—proceeded after him, content with Allah's ruling and decree, neither disputing it nor departing from it. The Exalted said in Sūrat al-Nisāʾ: *"But no, by your Lord, they will not [truly] believe until they make you judge concerning that over which they*

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[53] Hatem al-Haj, *"Taghayyur al-Aḥwāl wa al-ʿAwāʾid wa Atharuhu ʿalā al-Fatwā fī Aḥkām al-Usra maʿa Taṭbīqāt fī al-Qiwāma wa Mutʿat al-Ṭalāq"*, paper presented at the 20th Imams' Conference, American Assembly of Muslim Jurists, Houston – USA, 2024, p. 36.

[54] **Translator's note**: In uṣūl, *maṣlaḥah mursalah* refers to a consideration of benefit or harm:

- That has no direct textual proof (dalīl khaṣṣ) affirming or rejecting it.
- But it is consistent with the *maqāṣid al-sharīʿah* (objectives of the law): protecting religion, life, intellect, lineage, and property.

In other words:
It is when scholars legislate a ruling to serve a genuine public good, even though no specific verse or hadith explicitly addresses it — as long as it does not contradict the Qur'an or Sunnah.

dispute among themselves, then find within themselves no discomfort from what you have judged and submit in [full] submission." [Q. 4:65]

Finally, I wish to cite the fatwa of Shaykh Prof. Mashhūr Fawwāz, head of the Islamic Fatwa Council in the Palestinian interior—out of regard for the station of fatwa. None should assume the role of giving fatwa except one qualified for it. May Allah have mercy on Imām Mālik, the Imām of the Abode of Hijra; he was asked about forty-eight issues and in thirty-two of them said, "I do not know." Al-Ḥumaydī, in *Jadwat al-Muqtabis*, transmitted from al-Faḍl b. Dukkayn that he said: "I have not seen anyone say 'I do not know' more than Mālik b. Anas." Reports from Mālik saying "I do not know" and "I am not proficient [to answer]" are many—such that it was said, if a man wished to fill a page with Mālik's saying "I do not know," he could. He was once asked about an issue and said, "I do not know." The questioner said, "It is a light, easy question," and the questioner was a person of standing. Mālik became angry and said: "A light, easy question! There is nothing light in knowledge. Have you not heard Allah's saying: *'Indeed We will cast upon you a weighty word'* [Q. 73:5]? All knowledge is weighty—especially what one will be questioned about on the Day of Resurrection."[55]

The fatwa of Shaykh Prof. Mashhūr Fawwāz, Head of the Islamic Fatwa Council in the Palestinian Interior

Question: Is it permissible for a wife to demand half her husband's property in the event of divorce?

Answer: First, we affirm the independent financial liability of each spouse, and that the marriage contract is not a cause for mixing wealth between spouses.

The woman's right in the event of divorce does not exceed her Shar'īly prescribed financial rights: the dowry (mahr) and maintenance during the waiting period (ʿidda). It is not permissible for her to demand partnership with him in the house, land, or savings—whether he acquired them before the marriage contract or after it—because the man's ownership of his wealth is an exclusive right, over which he has full disposal, and nothing is obligatory upon him except what the Sharīʿa has made obligatory.

Sharīʿa has clarified what the wife deserves in the event of divorce, and there is no increase upon that except by the husband's agreement and consent. Indeed, it is forbidden to stipulate joint ownership in the marriage contract, and it is not permissible for the wife to act according to such a condition.

Accordingly: what the man earned by the toil of his hand is not lawful for the wife on the

[55] See these reports and further discussion with Imām al-Shāṭibī in *al-Muwāfaqāt*, vol. 5, p. 326.

pretext of her remaining in the marital home—whether he earned it before the marriage contract or during married life. And Allah Most High knows best.[56]

[56] Resolution No. (3) for the year 1444 AH, issued by the Ijtihād and Fatwa Committee of the International Union of Muslim Scholars regarding joint (shared) wealth between spouses, in its second session dated 2/5/1444 AH (corresponding to 26/11/2022 CE).