RESEARCH ARTICLE

The Problematic Nature of Legal Drafting and Terminological Precision in Algerian Legislation: The Family Law as a Case Study – A Comparative Study between Sharia and Statutory Law

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Abstract

Scholars in the field of law agree that the soundness of legal drafting and the precision in defining legislative terminology have a significant impact on the meaning of legal texts, particularly in terms of their proper application by judicial authorities. This is especially true for Family Law, which governs people's lives and settles their disputes in accordance with the provisions of Islamic Sharia, considered the primary reference for judicial bodies in resolving family-related cases. Even the slightest error in handling legal texts or a lack of precision in defining their terminology—failing to reconcile legal meaning with the corresponding Sharia meaning—can open the door to prohibited outcomes in many disputes arising among the general public.

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1. Introduction

There is no doubt that the Algerian legislator, when drafting legal texts—whether the earlier version numbered 84-11 dated 09/06/1984, or the newer amendments introduced by Ordinance 05-02 issued in 2005—produced a considerable number of legal gaps upon their entry into force. These gaps stemmed from numerous shortcomings and issues, particularly concerning the drafting of legal provisions and the failure to accurately define their terminology. These contradictions became evident in certain articles related to Family Law, which directly conflicted with the provisions of Islamic Sharia by violating definitive texts and general Sharia principles on one hand, and on the other, a set of legal provisions were marked by ambiguity and confusion in their judicial application due to the Algerian legislator's lack of terminological precision in legislative drafting. This imprecision has had a significant impact on the issuance of judicial rulings by the competent authorities.

Moreover, the legal texts neglected a number of issues that should have been included in Family Law as a priority. In some cases, the law remained silent on clarifying the rulings of sensitive family matters, prompting those concerned with family affairs to demand a revision of this law by redrafting its provisions in a way that harmonizes legal and Sharia-based considerations. Since Sharia terminology has its own semantic implications, and legal terminology

carries its own distinct meaning, it becomes necessary to formulate a structure that reconciles both.

Hence, the need emerged to call for amending the drafting of these provisions so that the law would be more coherent in terms of aligning the legal and Sharia meanings of terminology, while also ensuring the protection of spousal rights in pursuit of the interests of the family and society.

Accordingly, the core problem addressed in this study is:

What are the key issues and shortcomings raised in relation to the Algerian legislator's approach to legislative drafting and legal terminology definition?

Research Objectives:

The objectives of this study can be summarized as follows:

• To extract the legal texts marked by ambiguity and vagueness, whether due to poor legal drafting or imprecise terminology, and to attempt to clarify and contextualize them appropriately.
• To highlight the statutory provisions that contradict the rulings of Islamic Sharia in certain matters related to divorce and its consequences.

• To identify the legislative gaps introduced by the Algerian legislator and propose alternative suggestions to address them within the same subject area.

Research Methodology:

The nature of this topic required the use of two main methodological approaches in the course of this study:

The first is the analytical method, which involves analyzing the legal texts related to divorce in the Algerian Family Law, deducing the various legal rulings adopted by the Algerian legislator in some of its articles, and subjecting them to analysis and critique. The second is the comparative method, which consists of comparing the conclusions reached by the Algerian legislator with the rulings established in Islamic Sharia, and drawing relevant conclusions where necessary through discussion, presentation of evidence, weighing of opinions, and ultimately offering recommendations and solutions.

In line with the objectives outlined in this introduction, and in order to achieve the intended outcomes of this study, the research has been structured as follows:

Chapter One: The Problem of Drafting Legal Terminology Related to Divorce Rulings

- **Section One:** The Term Fahisha (Grave Immorality)
- **Section Two:** The Term Triple Divorce

Chapter Two: The Problem of Drafting Legal Terminology Related to the Effects of Separation

- **Section One:** The Establishment of Divorce
- **Section Two:** The Term Qur' (Waiting Period)

Conclusion

Chapter One: Challenges in the Drafting of Legal Terminology Related to Divorce Provisions

The Algerian legislator, in some articles and legal provisions within the Family Law, employed terms that are characterized by ambiguity and vagueness in terms of interpretation and explanation. This results in significant challenges when such terms are applied by judges, affecting both immediate and long-term legal outcomes. A slight error in these matters may lead to confusion between what is lawful (ḥalal) and unlawful (ḥaram), especially in a

society where religious awareness is relatively weak.

Accordingly, I have opted to divide this chapter into two sections. In each, I will examine the legislative problems present in the wording of **Article 53**, which uses the term faḥisha (grave immorality), and Article 51, which refers to triple divorce using a single, unqualified term.

Section 1.1: The Problematic Use of the Term Faḥisha (Grave Immorality) in Algerian Family Law

1. The Position of Algerian Family Law on the Term Faḥisha

Paragraph 7 of Article 53 states:

"A woman may request divorce if the husband commits a clearly defined act of immorality (faḥisha mubayyana)."

However, the Algerian legislator does not clarify what is meant by faḥisha in this context.

We observe here that the legislator grants a woman the right to request divorce in the case of faḥisha committed by the husband, yet fails to define the term itself—neither its meaning, scope, nor specific legal implications. The lack of definitional clarity leaves room for broad and subjective interpretation, which can lead to inconsistencies in judicial rulings.

1.2 The Term Faḥisha (Grave Immorality) in Islamic Sharia

a. Linguistic Definition of Faḥisha

Linguistically, faḥisha refers to anything that exceeds its proper bounds—it is excessive or egregious. The verb faḥusha (فَحُشَ) means "to be excessive," and tafaḥasha (تفاوحش) means "to become lewd or obscene." The phrase afḥasha ʿalayhi fi al-manṭiq refers to speaking obscenely or using profane language. [i] According to Ibn Sida, faḥsh, faḥshaʾ, and faḥisha all refer to that which is reprehensible in speech or action. The plural is fawaḥish. [ii]

b. Technical Definition of Faḥisha

From a technical standpoint, faḥisha refers to anything that repels sound human nature and is condemned by sound reason. [iii] Al-Raghib stated: "Al-faḥsh, al-faḥshaʾ, and al-faḥisha are actions and words whose ugliness is severe and apparent." [iv] Al-Ḥarali defined it as: "That which is despised by nature among the apparent vile acts, also rejected by reason and deemed impure by Sharia, whereby all three sources—Sharia, reason, and nature—concur in their judgment of its repulsiveness." [v]

c. Definition of Faḥisha in Islamic Jurisprudence (Fiqh)

In Islamic jurisprudence, the term faḥisha is applied to various meanings, including:

1. Referring to Adultery (Zina):

The word faḥisha is often used to refer to zina (unlawful sexual intercourse). [vi] Allah says:"Do not approach adultery. Indeed, it is ever an immorality (faḥisha) and is evil as a way." [vii]And in another verse: "Unless they commit a clear immorality (faḥisha mubayyana)." [viii]Ibn Bukayr explained: If the term faḥisha is qualified with mubayyana (clear), it refers to verbal obscenity; if left unqualified, it generally means adultery. Some scholars stated that when the term appears with the definite article (al-faḥisha), it refers to zina and liwaṭ (sodomy). Al-Ḥasan interpreted this to mean that husbands are permitted to pressure their wives only if they commit an explicit act of faḥisha, enabling them to seek compensation. This interpretation was supported by Ibn ʿAbbas in reference to nushuz (marital discord). [ix] Ibn al-Athir also stated: "Very often, the term faḥisha is used to mean adultery." [x]

2. Referring to an Ugly or Elderly Woman:

Ibn al-Aʿrabi said: **"You burdened your guests with your old woman after her charms became repulsive to suitors."** [xi]

3. Referring to a Stingy Person:

Ṭarfa said: **"I see that death chooses the noble and favors the miser who hoards his wealth."** Here, the term faḥish refers to one who is excessively miserly. Ibn Barri added: al-faḥish also describes someone of bad character, harsh and extremely stingy. [xii]

4. Referring to Anything Contrary to Truth or Proportion:

Ibn Jarir stated: "The root of fahsh is ugliness and the breach of boundaries or proper measure in anything. Hence, someone excessively tall is described as faḥish al-ṭul (disproportionately tall), meaning he is unpleasantly and excessively tall. Similarly, vulgar speech is called kalam faḥish, and one who utters it is said to have spoken fuhsh." [xiii]

5. Referring to Any Reprehensible Trait, Verbally or Behaviorally:

Ibn al-Jawzi, in his commentary on the verse: **"And those who, when they commit an immorality (faḥisha) or wrong themselves..."** [xiv] stated: "Faḥisha is something reprehensible. Anything that exceeds its limit is considered faḥish. In this verse, there are two views: the first is that it refers to zina, as stated by Jabir ibn Zayd, al-Suddi, and Muqatil; the second is that it refers to any major sin, according to a group of interpreters." [xv] Al-Alusi added: Some said faḥisha is a physical sin, while wronging oneself refers to verbal sin. Others held that faḥisha is any transgression that influences others—like publicizing sin, which leads others to imitate it—whereas wronging oneself refers to personal failings. Still others stated that faḥisha encompasses any severely repugnant sin and applies to any shameful act, whether verbal or behavioral. It frequently refers to adultery. At its core, faḥsh means exceeding limits in wrongdoing. [xvi]

6. Referring to Obscenity in Speech—of Two Types:

a. It may mean verbal abuse, insults, or obscene language, as in the hadith narrated by ʿAbdullah ibn ʿAmr (may Allah be pleased with them both): **"The Messenger of Allah (peace be upon him) was neither obscene nor indecent."** [xvii]

b. It may refer to aggressive or excessive speech, as in the hadith narrated by ʿA'isha (may Allah be pleased with her): **"A group of Jews came to the Prophet (peace be upon him) and said, 'Death be upon you.' ʿA'isha responded, 'And upon you, and may Allah curse you and be angry with you!' The Prophet said: 'Calm down, ʿA'isha. Be gentle and avoid harshness and obscenity.' She said: 'Did you not hear what they said?' He replied: 'And did you not hear what I said? I responded to them, and my supplication will be accepted, whereas theirs will not.'"** [xviii]

1.3 Discussion of the Term Faḥisha in Algerian Family Law

Article 61 of the Algerian Family Code (AFC) states: **"The divorced wife shall not leave the family home during her waiting period (ʿidda), except in the case of a clearly defined act of immorality (faḥisha mubayyana)."** This phrase also appears in paragraph 7 of Article 53 of the same code, which stipulates that a wife may seek divorce on the grounds of the husband's commission of a faḥisha mubayyana (clear act of immorality).

From this, it is apparent that the legislator has granted the wife the right to request divorce due to faḥisha. The term faḥisha mubayyana as intended by the Algerian legislator seems to refer to incestuous sexual relations—those acts committed between close blood relatives—which are explicitly criminalized under Article 337 bis [xix] of the Penal Code.

In this context, Article 333 of the Penal Code further states: **"A husband who commits the crime of adultery shall be punished with imprisonment from one to two years. The same penalty applies to his female partner."**

Based on this reasoning, the Algerian legislator appears to consider it unnecessary to re-define what constitutes faḥisha within the Family Code, in order to maintain consistency and avoid redundancy between different legal texts—since both the Family Code and the Penal Code are promulgated by the same legislative authority.

There is no doubt that when the legislator drafted Article 53, which includes paragraph 7 of the Family Code, he was aware of the content of Article 337 bis of the Penal Code. This raises a critical question and deepens the ambiguity: Does the crime of adultery fall under the scope of fawaḥish (grave immoralities)?

While Islamic Sharia unequivocally considers adultery a grave immorality, the statutory legal framework may not explicitly categorize it as such. If this matter is brought before a judge, which legal provision should be applied? Should the judge apply Sharia-based provisions, which define adultery as a faḥisha, or should he apply statutory provisions that remain silent on this point?

According to Article 1 of the Algerian Civil Code, which states: **"The law applies to all matters explicitly or implicitly addressed by its provisions. If no legal provision exists, the judge shall rule in accordance with the principles of Islamic Sharia,"**
—this means the judge is legally bound to apply the existing statutory law. He is not permitted to seek clarification from Sharia to determine what qualifies as a faḥisha, since this matter is already addressed by the Penal Code.

Thus, in the event that the husband commits adultery and is sentenced to a custodial sentence exceeding one year, Article 53(4) of the Family Code applies. However, if the sentence is less than one year, or if it is suspended, Article 53(6) must be applied.

It is important to note that the legislator treated the crime of faḥisha as a distinct case. He did not require that the offense result in a custodial sentence exceeding one year; rather, it suffices that the act falls under the category of fawaḥish. Therefore, even if the punishment is less than one year or non-custodial, the wife retains the right to request divorce. [xx]

On another note, it is observed that this article also suffers from poor drafting and a lack of precision, which undermines the legal clarity typically required by the nature of legal rules. [xxi] This imprecision is evident in the use of the term "family home," a designation which conflicts with the concept of irrevocable divorce (ṭalaq ba'in) as established by Article 50 [xxii] of the Family Code. In such cases, there is no longer a marital bond justifying the wife's continued residence in the so-called family home, rendering the use of this term legally and conceptually inconsistent.

Subsection Two: The Problematic Nature of Triple Divorce in One Utterance in Algerian Family Law

First – The Position of Algerian Family Law:

Article 51 of the Algerian Family Code states: **"A man may not take back a woman whom he has divorced three consecutive times except after she marries another man and he either divorces her or dies after consummating the marriage."**

Second – The Position of Islamic Sharia on Triple Divorce in One Utterance:

Jurists have expressed three opinions on issuing three divorces in a single utterance:

A – The Majority, including the four Imams of the Sunni schools and the Zahiris, hold that pronouncing triple divorce in one utterance counts as three divorces. [xxiii] This view is attributed to most of the Companions, including the Rightly Guided Caliphs except for Abu Bakr, as well as to the Four Abdallahs (Ibn 'Umar, Ibn 'Amr, Ibn 'Abbas, and Ibn Mas'ud), Abu Hurairah, and many of the Followers (Tabi'in). However, according to the Hanafis and Malikis, it is not recommended for a man to issue more than one divorce, as the Sunnah divorce is to pronounce one and then wait until her 'iddah ends.

B – The Shiite Imami school holds that such a divorce has no effect at all. [xxiv]

C – The Zaydis, some Zahiris, Ibn Ishaq, Ibn Taymiyyah, and Ibn al-Qayyim hold that it counts as **only one divorce**, regardless of wording. [xxv] Egyptian and Syrian laws have adopted this view. For example, the Syrian law states: [xxvi]

- Article 91: The husband has three divorces over his wife.

- Article 92: Divorce accompanied by a number, whether verbal or gestural, counts only as one.

However, the Fatwa Committee in Riyadh later retracted this position and, by majority, adopted the view that triple divorce in one utterance counts as three. [xxvii]

Evidence for These Opinions:

A – The Imami (Shiite) view that it has no effect:

They use the same evidence they rely on for denying the validity of divorce during menstruation, as both are considered unlegislated (haram) acts.
Also, the Quranic verse: **"Then (either) retain them in kindness or part with them in kindness"** [xxviii] indicates that the condition for issuing the third divorce is that the husband must be in a valid state to retain her. If he cannot retain her without a prior revocation (ruju'), then the third divorce is invalid unless preceded by revocation — and thus the same applies to the second divorce. [xxix]

B – The Zaydi, Ibn Taymiyyah, and Ibn al-Qayyim's view (that it counts as one divorce):

1 – From the Quran:: His saying, the Exalted: "Divorce is twice", [xxx] up to His saying regarding the third divorce: "And if he divorces her [again], then she is not lawful to him afterward until she marries a husband other than him". [xxxi] This indicates that the legislated practice is to separate divorces, one at a time, because He, the Exalted, said: "twice" and did not say "two divorces [at once]."

Issuing all divorces at once is not legislated. Therefore, if a man combines the three divorces in one utterance, it counts only as one; and the one who pronounces the triple divorce in a single expression is considered to have divorced once, not thrice.

This is countered by the argument that the verse merely guides toward the legislated or permissible manner of divorce, and it does not indicate whether the divorce is valid or invalid when not issued separately. Hence, the matter must be referred to the Sunnah, which clarifies that a triple divorce issued in one utterance is considered to count as three divorces. [xxxii]

2 – From the Sunnah:

- The hadith of al-Hassan from Ibn 'Umar, who divorced his wife while she was menstruating. The Prophet Peace Be Upon Him instructed him to wait for her purity and then divorce her one at a time. When asked: "What if I had divorced her three times?" the Prophet Peace Be Upon Him replied: "Then she would have been separated from you and it would have been a sin." [xxxiii]
- The hadith of Ibn 'Abbas: "Triple divorce used to count as one during the time of the Prophet Peace Be Upon Him, Abu Bakr, and the first two years of 'Umar's caliphate. Then 'Umar said: 'People have begun to rush into a matter in which they had time, so let us enforce it upon them.' And he did." [xxxiv] This clearly shows that triple divorce in one utterance was counted as one in early Islam, and that 'Umar's decision was based on policy and public interest. [xxxv]

This view is countered by the interpretation that the hadith refers to repetitive utterance, such as saying, "You are divorced, you are divorced, you are divorced," where only one divorce is binding if the intent is emphasis. If the intent is actual repetition, then three divorces are binding. During the Prophet's time, people were sincere in their intent and mostly intended emphasis. Later, 'Umar enforced three divorces due to increasing manipulation and dishonesty. [xxxvi]

Moreover, this ruling applies to judicial decisions, whereas in personal conscience (diyaana), a person is judged by their intent. Changing rulings based on societal change is valid, and the hadith itself remains subject to interpretation.

- The hadith of Ibn 'Abbas on Rukana, who divorced his wife three times in one sitting and was deeply grieved. The Prophet Peace Be Upon Him asked: "Was it in one sitting?" When Rukana confirmed, the Prophet Peace Be Upon Him said: "That counts as one; take her back if you want." [xxxvii] This is supported by Ibn 'Abbas's opinion that a

triple divorce is valid only when done in separate periods. [xxxviii]

Objections to this hadith include:

- It includes Muhammad ibn Ishaq in the chain of narration.
- It contradicts Ibn ‘Abbas’s own fatwa that triple divorce counts as three.
- Abu Dawud reported that Rukana may have said "al-battah" (final) rather than “three,” which could have been misunderstood.

C – Evidence of the Majority: That it Counts as Three Divorces : [xxxix]

1. **Quran:**

“Divorce is twice, then either keep [her] in an acceptable manner or release [her] with good treatment”. [xl] This indicates that a triple divorce issued at once does take effect, even though it is prohibited, because His saying: “Divorce is twice” is a reminder of the wisdom behind spacing the divorces, namely to allow the possibility of reconciliation. However, if a man disregards this wisdom and issues two divorces at once, their occurrence is valid, since there is no actual separation between them.

Furthermore, His saying: “Then she is not lawful to him afterward until she marries a husband other than him” [xli] indicates that she becomes forbidden to him after the third divorce following the first two, without distinguishing whether those divorces occurred within a single purity period or across multiple ones.

2 – Among them is His saying, the Exalted: “Then divorce them [in a manner] for their waiting period”, [xlii] up to His saying: “These are the limits set by Allah, and whoever transgresses the limits of Allah has certainly wronged himself.” This indicates that the legislated divorce is that which is followed by a waiting period (‘ʿiddah’), which does not apply in the case of issuing a triple divorce during the waiting period. It also signifies that divorce issued outside of its prescribed time still takes effect. If it did not, the individual would not be considered as having wronged himself by issuing it improperly. Thus, whoever does not divorce in accordance with the waiting period—for example, by issuing a triple divorce—has wronged himself.

3 – Also His saying, the Exalted: “And for divorced women is a provision, according to what is acceptable”, [xliii] and other similar verses regarding divorce. The apparent meanings of these verses suggest no distinction between issuing one divorce, two, or three.

Response: These are general statements that are specified and absolute expressions that are restricted by other evidence, which indicates the impermissibility of issuing more than a single divorce at once. [xliv]

2. **Sunnah:**

o The hadith of Sahl ibn Sa‘d in the case of ‘Uwaymir al-‘Ajlani, who divorced his wife three times during li‘an (mutual cursing). The Prophet Peace Be Upon Him did not object. [xlv]

o The hadith of Mahmoud ibn Labid, in which the Prophet Peace Be Upon Him was angered by a man divorcing his wife three times at once and said: “Is the Book of Allah being played with while I am among you?” [xlvi]

o It was objected that this is a mursal (incompletely transmitted) hadith, because Mahmoud ibn Labid is not confirmed to have heard directly from the Messenger of Allah (peace and blessings be upon him), even though he was born during the Prophet’s lifetime. This objection is refuted, however, because the mursal narration of a Companion is accepted. [xlvii]

o The hadith of Rukana, who swore he only meant one divorce by saying “al-battah”. The Prophet Peace Be Upon Him took his oath and allowed him to revoke it. [xlviii] This shows that if he had meant three, they would have counted as such.

o The hadith of ‘Ubadah ibn al-Samit, whose grandfather divorced his wife a thousand times. The Prophet Peace Be Upon Him said: “Three are valid; the rest are aggression and injustice.” [xlix] Though some challenge the chain of narration [l]

Consensus:

It was claimed that the early generations (al-salaf) unanimously agreed that a triple divorce issued in a single utterance

counts as three divorces. Among those who reported consensus (ijmaʿ) on the binding nature of three divorces pronounced in one statement are: Abu Bakr al-Razi, al-Baji, Ibn al-ʿArabi, and Ibn Rajab.

This was countered by stating that no consensus has been definitively established, as Abu Dawud narrated from Ibn ʿAbbas that he considered the triple divorce to count as one. Furthermore, Ṭawus and ʿAṭaʾ both said: "If a man divorces his wife three times before consummating the marriage, it is counted as one." [li]

4 – Reports (al-Athar):

Numerous reports have been transmitted from the Companions (may Allah be pleased with them) indicating that they considered a triple divorce issued at once as three separate divorces.

- Among them is what Abu Dawud narrated from Mujahid, who said: "I was with Ibn ʿAbbas when a man came to him and said: 'I divorced my wife three times.' Ibn ʿAbbas remained silent to the point I thought he would return her to him. Then he said: 'One of you proceeds with recklessness, and then says: O Ibn ʿAbbas! Verily Allah, the Exalted, said: "And whoever fears Allah – He will make for him a way out", [lii] and you did not fear Allah, so I find no way out for you. You have disobeyed your Lord, and your wife is now irrevocably separated from you." [liii]
- Another report is what Malik narrated in al-Muwaṭṭaʾ: It reached him that a man came to ʿAbd Allah ibn Masʿud and said: "I have divorced my wife eight times." Ibn Masʿud replied: "And what was said to you?" He said: "I was told that she is now separated from me." [liv]
- Also, what Ibn Abi Shaybah narrated in his Muṣannaf: A man came to ʿUthman ibn ʿAffan and said: "I have divorced my wife a hundred times." ʿUthman said: "Three of them render her forbidden to you, and the remaining ninety-seven are acts of aggression." [lv]
- He also narrated: Abu Bakr said: Wakiʿ told us, from al-Aʿmash, from Ḥabib, who said: A man came to ʿAli and said: "I have divorced my wife a thousand times." ʿAli said: "She is separated from you by three; as for the rest, divide them among your other wives." [lvi]

Similar reports are authentically transmitted from other Companions, as well as from the Followers (tabiʿin) and those who came after them.

3. Analogy (Qiyas): Ibn Qudamah argued: "Marriage is a right that can be revoked in parts or all at once, like other property rights." Ibn al-Qayyim countered: "The one who combines what should be separated has transgressed Allah's limits." [lvii]Al-Qurtubi stated: "The obligation of triple divorce is evident: a woman divorced three times becomes unlawful for the man until she marries another." [lviii]

Personal Conclusion: [lix]

It appears that the opinion of the majority — that three divorces in one utterance count as three — is the stronger view. However, if a judge adopts the weaker opinion through legislation, as is the case in some Arab countries, it becomes the binding rule. This can be beneficial for preserving marital ties and protecting children, especially in today's era of laxity and misuse of triple divorce as a threat.

There is no harm in departing from the majority opinion as long as one stays within the framework of Islamic jurisprudence. After all, several Companions and early jurists held this view, and the debate continues to this day. [lx]

Third – Discussion of Algerian Family Law:

The Algerian legislator, in Article 51, states: **"A man may not take back a woman whom he has divorced three consecutive times except after she marries another man and he either divorces her or dies after consummating the marriage."** This is therefore an acknowledgment that triple divorce renders the wife unlawful to her husband unless she marries another man. In general, this ruling aligns with Islamic Sharia.

However, as for the issue of triple divorce in a single utterance (i.e., "You are thrice divorced"), sequential divorce (i.e., "You are divorced, you are divorced, you are divorced"), and divorce during the 'iddah (waiting period), the law does not explicitly address these scenarios—even though it does refer to "three consecutive divorces."

So, what is meant by this expression? Does it mean: he divorces, then takes her back, then divorces again, and takes her back, then divorces a third time? Or does it mean: he divorces, then again divorces, then again divorces, which would be sequential divorce, including divorce during the 'iddah?

Thus, this article is shrouded in ambiguity. The apparent interpretation suggests the first case—that is, it refers to three successive divorces with revocations in between—since it uses the expression "three consecutive times." This would mean that the article does not refer to the case of triple divorce in one utterance, nor to sequential divorce.

Even if one might understand from Article 51 that triple divorce in a single utterance does not count (because it is not "consecutive"), this cannot be definitively attributed to the legislator. Article 222 of the same law explicitly states: "In all matters not addressed by this law, reference shall be made to Islamic Sharia."

By returning to Islamic Sharia, we find an ongoing juristic dispute on the matter. The majority of jurists, including the four Sunni schools, hold that triple divorce in one utterance counts as three divorces, and they also uphold the validity of sequential divorce and that divorce during the 'iddah, whether revocable or minor irrevocable, still applies.

On the other hand, those who disagree with the majority argue that all three divorces count only as one, and that divorce does not apply to a woman in her 'iddah.

In such cases, the judge faces a dilemma when adjudicating. What standard should he follow? Should he adopt the majority view or the minority view? Yet it is not his role to weigh scholarly opinions, but rather to apply the law precisely.

Second Section: The Problematic Nature of Legal Terminology Related to the Effects of Separation

When examining the legal texts issued by the legislator in the realm of personal status, we find that the use of unclear terminology has led to legal ambiguity that is inconsistent with the meaning intended in Islamic jurisprudence. Undoubtedly, issues such as the validation of divorce (as stated in Article 49), the verbal utterance of divorce in Sharia, and the consequences related to revocation and waiting periods ('iddah)—especially given the dispute among jurists over the meaning of the term "qur'"—all stem from the problematic wording and definition of legal terms, which will be discussed in this section.

Subsection One: The Problem of Divorce Validation (Notification and Divorce Methods) in Algerian Family Law

First: The Position of Algerian Family Law

Article 49 of the Family Code (Order No. 05-02 dated 27 February 2005) states:**"Divorce is not valid unless confirmed by a court ruling after several reconciliation attempts conducted by the judge, not exceeding three months from the date the case was filed."**

Second: The Position of Islamic Sharia

Given the **unclear direction** of the Algerian legislator, it is necessary to refer to how **divorce is regulated in Islamic law** and to what extent this matches the Family Code. In other words:**Did Islamic Sharia leave the right of divorce unrestricted, or did it impose conditions on the husband for it to be valid? And once divorce occurs, what are the approved Sharia methods to establish it?**

1. Testimony (Shahada) in Divorce According to Islamic Sharia

Scholars differed on the **legal ruling of witnessing a divorce**, falling into two opinions:

First opinion – It is recommended, not obligatory, based on the Quranic verse:**"And when they have [nearly] fulfilled their term, either retain them according to acceptable terms or part with them according to acceptable terms. And bring to witness two just men from among you and establish the testimony for Allah."** [lxi] Thus, if a man divorces without witnesses, the divorce still counts. This is the opinion of the four Imams: Abu Hanifa, [lxii] Malik, [lxiii] al-Shafi'i, [lxiv] and Ahmad. [lxv] Their statements confirm this, for example:

"The verse recommends, not mandates. Note how both revocation and separation are mentioned, and the requirement of witnesses for separation is a recommendation, so it must also be so for revocation." [lxvi] "Testimony in divorce is not an obligatory condition according to the majority, but a recommendation and precaution—just like in sales and revocation. Some even say it is more emphasized in revocation." [lxvii]"No scholar has said it is haram to divorce without witnesses. Allah knows best—it's a sign of preference, not an obligation." [lxviii] "Revocation does not require witnesses, as it doesn't require acceptance—similar to other spousal rights." [lxix]

Second opinion – Testimony is obligatory:

This was the opinion of Ibn 'Abbas, 'Imran ibn Husayn, and among the Successors: 'Ata', Ibn Jurayj, Ibn Sirin, and Sa'id ibn al-Musayyib. [lxx] Also: Muhammad al-Baqir, Ja'far al-Sadiq, and among jurists: Ibn Hazm, [lxxi] the Shiite Imami school,[lxxii] and contemporary scholars such as Muhammad Abu Zahra, [lxxiii] Mustafa al-Zarqa, [lxxiv] Badran Abu al-'Aynayn, [lxxv] and 'Ali al-Khafif. [lxxvi] For example:

"Al-Mutarrif ibn 'Abd Allah reported that 'Imran ibn Husayn was asked about a man who divorced his wife, then had relations with her without having witnesses. He said: 'He divorced her unlawfully, and took her back unlawfully. You must testify to both and never repeat this.'" [lxxvii]
From Sufyan via Jurayj from 'Ata': "Separation and revocation must be witnessed." [lxxviii]
Ibn Hazm stated in Al-Muhalla: "Allah did not differentiate between revocation and divorce in testimony. One who divorces or revokes without two just witnesses violates Allah's limits." [lxxix]
Al-Suddi said that the verse refers to both divorce and revocation. [lxxx]

2. Methods of Establishing Divorce in Sharia and Law

A – In Sharia:

Divorce is established through all standard methods of evidence: confession, testimony, or oath. If a woman claims that her husband divorced her and he denies it:

- According to the Malikis, [lxxxi] if she brings two trustworthy witnesses, the divorce is upheld. If only one, the husband is asked to swear; if he refuses, he is jailed until he confesses or swears. If there's no witness, nothing is due from him, but she should avoid him to the best of her ability. If she claims he swore a divorce oath and broke it, his oath is considered final.
- The Hanbalis [lxxxii] state: if a woman claims divorce and the husband denies it, his word is taken under oath, as marriage remains by default. But if she brings two male witnesses, the divorce is upheld. If not, the man is made to swear, based on the hadith:

"The oath is upon the one who denies." [lxxxiii]

B – In Law:

Article 49 of the Family Code states: **"Divorce is not established except by a ruling..."**, and **Article 40** [lxxxiv] likewise applies. But how should one interpret these expressions? If they imply that divorce cannot be established except by a court ruling, this becomes problematic—especially since courts can use Sharia-compliant evidence (e.g., witnesses) to confirm informal divorces.

This interpretation is flawed because it implies that no divorce case is admissible unless it occurred before the Family Code came into force. Perhaps what the legislator meant is that the only just means of divorce is through a judge's ruling.

Thus, in the absence of that ruling, divorce is valid only exceptionally, such as in verbal divorces issued between July 1, 1975, and the date the Family Code came into effect. [lxxxv] In such cases, judges may accept Sharia-based testimony. But the law fails to clarify the exceptional circumstances that allow the court to hear such cases.

Moreover, the law gives the false impression that all divorce rulings are declarative, not constitutive—which is inaccurate. Hence, it would have been preferable for the legislator to use the phrase "does not occur" rather than "is

not established."

This ambiguity in legal terminology led the Supreme Court to issue contradictory rulings.

- In a decision on 25 December 1989, it ruled:

"Divorce is not legally valid unless confirmed by a ruling after a reconciliation attempt by the judge." [lxxxvi]

- However, on 16 February 1999, it ruled:

"When it is proven that divorce occurred in the presence of a group of Muslims and the court has heard witnesses who confirmed that the husband indeed divorced the wife in that setting, then he cannot retract it. Therefore, the judges were correct in recognizing the informal divorce." [lxxxvii]

Subsection Two: The Problematic Ambiguity of the Term "Qurʾ" in the Algerian Family Law

First: The Position of Algerian Family Law Regarding the Term "Qurʾ"

The first clause of Article 58 of the Algerian Family Code, in the context of 'iddah (the waiting period) as a consequence of divorce, states: **"A divorced woman who has consummated the marriage and is not pregnant must observe a waiting period of three quruʾ."**However, the legislator does not define in any provision of the Family Code what is meant by the term "qurʾ".

Second: The Position of Islamic Sharia Regarding the Term "Qurʾ"

In the Arabic language, the word qurʾ (with a fatḥa or ḍamma) refers both to menstruation and purity—it is one of the addad (words with opposing meanings). Its plural forms are quruʾ, aqraʾ, aqruʾ, just like filss (coin) and fulus (coins), or qufl and aqfal (lock/locks). Some say its original meaning refers to **a time interval**. [lxxxviii]

Jurisprudentially, scholars have differed on the interpretation of qurʾ in two main opinions:

- First opinion: According to the Maliki and Shafiʿi schools, Aḥmad ibn Ḥanbal in one narration, many Companions (may Allah be pleased with them), and the jurists of Medina: the term qurʾ in the context of waiting periods refers to periods of purity. [lxxxix] This is based on the statement of ʿA'isha (may Allah be pleased with her): "The quruʾ are periods of purity." [xc]
- Second opinion: According to the Ḥanafi school, Aḥmad ibn Ḥanbal in another narration, the four Rightly Guided Caliphs, a group of early scholars, Ibn Masʿud, and many of the Companions and Successors as well as scholars of ḥadith: the term qurʾ refers to menstrual periods. Aḥmad said in the narration of al-Naysaburi: "I used to say that it referred to purity, but today I hold the view that quruʾ refers to menstruation." [xci]

Third: Discussion of Algerian Family Law

The failure to define this term through a clear legal provision—where the legislator did not explain whether qurʾ means menstruation or purity—leads to ambiguity. Referring back to Islamic jurisprudence does not resolve the issue, given the broad disagreement among scholars and the difficulty in determining the stronger opinion due to the equivalence of evidences.

This vagueness poses a burden both for the judiciary and for those affected by the ruling, and could even become a gateway for confusion between what is lawful and unlawful, particularly in a society where religious commitment has weakened.

Despite the Qur'anic miracle in the verse: **"And divorced women shall wait [observe 'iddah] for three quruʾ."** [xcii] —the legislator should have been **clearer** by explicitly defining the meaning of qurʾ, rather than leaving it to scholars' interpretations in Islamic jurisprudence.

Conclusion

The Algerian Family Code addressed the forms of marital dissolution through brief provisions without adopting clear, defined terminology for each form. This deficiency arises from poor legislative drafting and the lack of precision in legal terminology, which hinders judges in issuing rulings. These forces them to refer back to Islamic Sharia to resolve such matters, as provided for in Article 222.

There is no doubt that Islamic jurisprudence, characterized by the multiplicity of legal schools, has enriched rulings with varied perspectives based on differing interpretations of textual sources. Consequently, a single legal issue might receive multiple valid rulings across different schools, and the individual seeker of fatwa is left to choose among these.

Therefore, it would have been more appropriate for the Algerian legislator to adopt a specific school of jurisprudence as a reference to facilitate the judges' work in matters of personal status, rather than combining between different schools or attempting to appease secularist demands, such as those of feminist associations now calling for:

1. Equal inheritance between men and women,
2. Recognition of adoption,
3. Abolition of polygamy,
4. Abolition of divorce, and
5. Elimination of the 'iddah period.

These jurisprudential issues, where disagreement among scholars is significant, fall under the category of legally flexible matters. They require comparative jurisprudential study so the judge may reconcile public interest with Sharia-based texts and general legal principles.

Ultimately, such work is not the responsibility of the judge, but rather a duty of the legislator.

Endnotes and References

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2. Ibn Manzur, *Lisan al-Arab*, Dar Ihya' al-Turath al-Arabi, 3rd ed., 1999 CE, vol. 6, p. 325.
3. Ali ibn Muhammad al-Sharif al-Jurjani, *Al-Ta'rifat*, edited by a group of scholars under the supervision of the publisher, Dar al-Kutub al-'Ilmiyyah, Beirut, 1st ed., 1403 AH / 1983 CE, p. 165.
4. Al-Raghib al-Asfahani, *Al-Mufradat fi Gharib al-Qur'an*, Dar al-Qalam, Al-Dar al-Shamiyyah, Damascus–Beirut, 1st ed., 1412 AH, p. 626.
5. Zayn al-Din Muhammad, known as 'Abd al-Ra'uf ibn Taj al-'Arifin ibn Ali ibn Zayn al-'Abidin al-Haddadi al-Munawi al-Qahiri, *Al-Tawqif 'ala Muhimmat al-Ta'arif*, 'Alam al-Kutub, Cairo, 1st ed., 1410 AH / 1990 CE, p. 257.
6. Ibn Manzur, ibid.
7. Surat al-Isra', verse 32.
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9. Abu al-Walid al-Baji, *Al-Muntaqa Sharh al-Muwatta'*, Matba'at al-Sa'adah, 1st ed., 1332 AH, vol. 4, p. 65.
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11. Ibn Manzur, ibid.
12. Ibn Manzur, ibid.
13. Muhammad ibn Jarir al-Tabari, *Jami' al-Bayan fi Ta'wil al-Qur'an*, ed. Ahmad Muhammad Shakir, Mu'assasat al-Risalah, 1st ed., 1420 AH / 2000 CE, vol. 7, p. 218.
14. Surat Al 'Imran, verse 135.
15. Jamal al-Din Abu al-Faraj 'Abd al-Rahman ibn 'Ali ibn Muhammad al-Jawzi, *Zad al-Masir fi 'Ilm al-Tafsir*, ed. 'Abd al-Razzaq al-Mahdi, Dar al-Kitab al-'Arabi, Beirut, 1st ed., 1422 AH, vol. 1, p. 327.

16. Al-Alusi, *Ruh al-Ma'ani fi Tafsir al-Qur'an al-'Azim wa al-Sab' al-Mathani*, ed. Ali 'Abd al-Bari 'Atiyyah, Dar al-Kutub al-'Ilmiyyah, Beirut, 1st ed., 1415 AH, vol. 2, p. 274.
17. Reported by al-Bukhari in his *Sahih*, Book of Good Character and Generosity and the Dislike of Misery, hadith no. 6035 (8/13); and Muslim, Book of His Shyness, hadith no. 2321 (4/1810).
18. Reported by al-Bukhari in his *Sahih*, Book: The Prophet Peace Be Upon Him was neither rude nor obscene, hadith no. 6030 (8/12).
19. Sexual acts among close blood relatives (fathers, mothers, siblings, and children) are considered immoral among kin.
20. Omar Zoudah, *The Nature of Provisions on Terminating the Marital Bond*, pp. 54–55.
21. Jilali Tchouar, *Methods of Legal Sciences*, lectures delivered to 1st-year law students, Faculty of Law, University of Tlemcen, 2002/2003.
22. "One who reconciles with his wife during the reconciliation attempt does not need a new contract, but if he does so after the issuance of a divorce ruling, a new contract is required."
23. Ibn Hazm, *Al-Muhalla bi al-Athar*, ed. Muhammad Munir al-Dimashqi, Idarat al-Tiba'ah al-Muniriyyah, Egypt, 1st ed., 1929 CE, vol. 9, p. 389; Ibn Rushd al-Qurtubi, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, vol. 3, p. 84; Abu Ishaq al-Shirazi, *Al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i*, ed. Zakariya 'Amrit, Dar al-Kutub al-'Ilmiyyah, Beirut, 1st ed., 1995 CE, vol. 3, p. 7; Shams al-Din al-Khatib al-Shirbini al-Shafi'i, *Mughni al-Muhtaj ila Ma'rifat Alfaz al-Minhaj*, Dar al-Ma'rifah, Beirut, 1st ed., 1997 CE, vol. 4, p. 501 ff.; Ibn Qudamah al-Maqdisi, *Al-Mughni*, Dar 'Alam al-Kutub, Saudi Arabia, 3rd ed., 1997 CE, vol. 7, p. 370.
24. Abu al-Tayyib Muhammad Siddiq Khan al-Bukhari al-Qinnawji, *Al-Rawdah al-Nadiyyah*, with commentary *Al-Ta'liqat al-Radiyyah*, ed. Ali ibn Hasan al-Halabi al-Athari, Dar Ibn al-Qayyim, Riyadh, and Dar Ibn 'Affan, Cairo, 1st ed., 1423 AH / 2003 CE, vol. 2, p. 248.
25. Muhammad Siddiq Khan, ibid., vol. 2, p. 250.
26. Wahbah al-Zuhayli, *Islamic Jurisprudence and Its Evidence*, 4th ed., Dar al-Fikr, Damascus, 1405 AH / 1985 CE, vol. 7, p. 407.
27. *Journal of Islamic Research*, vol. 1, no. 3, 1397 AH, p. 165 ff.
28. Surat al-Baqarah, verse 229.
29. Wahbah al-Zuhayli, ibid., vol. 7, p. 408.
30. Surat al-Baqarah, verse 229.
31. Surat al-Baqarah, verse 230.
32. Wahbah al-Zuhayli, ibid.
33. Reported by al-Daraqutni in his *Sunan*, Book of Divorce, (hadith no. 3974, 5/56). The hadith contains a chain of transmission including 'Ata' al-Khurasani, whose reliability is debated. While al-Tirmidhi deemed him trustworthy, others like al-Nasa'i and Ibn al-Musayyib expressed doubts. See: *Nayl al-Awtar* (6/270–271); *Dhakhirat al-'Uqba fi Sharh al-Mujtaba* by al-Ethiopi (28/258).
34. Reported by Muslim in his *Sahih*, Book of Divorce, Chapter on Triple Divorce, (hadith no. 1472, 2/1099).
35. Wahbah al-Zuhayli, ibid., vol. 7, p. 409.
36. Wahbah al-Zuhayli, ibid.
37. Reported by Ahmad ibn Hanbal in his *Musnad* (hadith no. 2387, 3/91), ed. Ahmad Muhammad Shakir, Dar al-Hadith, Cairo, 1st ed., 1416 AH / 1995 CE. The editor stated its chain is authentic. Despite debate, the hadith gains strength through multiple chains. See also: *Abu Dawud* (2196), *al-Bayhaqi* (7/339), and *Fath al-Bari* (9/275–276).
38. Wahbah al-Zuhayli, ibid.
39. Wahbah al-Zuhayli, ibid., vol. 7, p. 410.
40. Surat al-Baqarah, verse 229.
41. Surat al-Baqarah, verse 230.
42. Surat al-Talaq, verse 1.
43. Surat al-Baqarah, verse 240.
44. Wahbah al-Zuhayli, ibid.
45. Reported by al-Bukhari in his *Sahih*, Book of Divorce, Chapter on Approving Triple Divorce (hadith no. 5259, 3/42); and Muslim in his *Sahih*, Book of Divorce, Chapter on the End of the Waiting Period for the Widow (hadith no. 1492, 2/1129).
46. *Sunan al-Nasa'i*, Book of Divorce, Chapter on Divorce Outside the Waiting Period (hadith no. 3401, 6/142). Ibn Hajar noted its transmitters are trustworthy, but the narration's chain is contested due to lack of evidence of direct hearing. See: *Fath al-Bari* (9/362); *Bulugh al-Maram*, ed. Maher Yasin al-Fahl (1/407).
47. Wahbah al-Zuhayli, ibid., vol. 7, p. 411.

48. Reported by Abu Dawud in his *Sunan*, Book of Irrevocable Divorce (al-Battah), (hadith no. 2206, 3/529 ff.). Al-Arna'ut graded the chain as sound. Also in *al-Daraqutni* (hadith no. 3979). Al-Hakim authenticated it. See also: *Irshad al-Faqih* by Ibn Kathir (2/197); *Al-Istidhkar* by Ibn Abd al-Barr (no. 25105).
49. Reported by 'Abd al-Razzaq al-San'ani in his *Musannaf*, Book of Divorce, Chapter on Triple Divorce (hadith no. 11339, 6/390). The hadith is very weak due to multiple defects in the chain. See: *Al-Matalib al-'Aliyah* by Ibn Hajar (8/428).
50. Wahbah al-Zuhayli, ibid., vol. 7, p. 412.
51. Narrated by Abu Dawud in his *Sunan*, Book of Divorce, Chapter on the Abrogation of Taking Back after Three Pronouncements of Divorce, (Hadith: 2199, 3/524).
Weak Hadith: It was narrated by Abu Dawud (2199), and also by al-Bayhaqi (7/338–339) through the chain of Hammad ibn Zayd from Ayyub, from more than one person, from Tawus, that a man named Abu al-Sahba', who used to ask many questions to Ibn Abbas, said: When a man divorced his wife three times before consummation during the time of the Messenger of Allah (peace be upon him), they used to consider it as one divorce.
Al-Mundhiri criticized the hadith for having unknown narrators and said in *Mukhtasar Sunan Abi Dawud* (3/124): "The narrators from Tawus are unknown." Therefore, the hadith is weak due to the anonymity of some narrators and its irregularity in the text. See *al-Muqarrar 'ala Abwab al-Muharrar* (2/182).
52. *Surah At-Talaq*, Verse 2.
53. Wahbah al-Zuhayli, *Previously Cited Source*, Vol. 7, p. 412.
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57. *Al-Mughni*, Vol. 7, p. 370.
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64. Abu Bakr al-Bayhaqi, *Ahkam al-Qur'an by al-Shafi'i* – Compiled by al-Bayhaqi, *Maktabat al-Khanji*, Cairo, 2nd ed., 1414 AH – 1994 CE, Vol. 2, p. 132.
65. Mansur ibn Idris al-Buhuti, *Kashshaf al-Qina' 'an Matn al-Iqna'*, edited by: Ibrahim Ahmad 'Abd al-Ra'uf, *Dar 'Alam al-Kutub*, Vol. 7, p. 269.
66. Shams al-Din al-Sarakhsi, *Al-Mabsut*, *Dar al-Ma'rifah*, Beirut, 1414 AH – 1993 CE, Vol. 6, p. 19.
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69. Al-Buhuti, *Kashshaf al-Qina'*, *Dar al-Fikr*, Vol. 5, p. 342.
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71. Ibn Hazm, *Al-Muhalla*, Vol. 10, p. 17.
72. Abu Hanifa, *Da'a'im al-Islam wa Dhikr al-Halal wa al-Haram wa al-Qadaya wa al-Ahkam*, by the Ahl al-Bayt of the Messenger of Allah (peace be upon him), *Dar al-Adwa'*, Vol. 2, p. 211.
73. Muhammad Abu Zahra, *Fiqh al-Ahwal al-Shakhsiyyah* (Personal Status Jurisprudence), p. 365.
74. *Draft Unified Personal Status Law for the Egyptian and Syrian Regions*, *Dar al-Qalam*, *al-Dar al-Shamiyyah*, 1st ed., 1996, pp. 168–169.
75. Badran Abu al-'Aynayn Badran, *Marriage and Divorce in Islam*, *Mu'assasat Shabab al-Jami'ah*, p. 379.
76. Ali al-Khafif, *Lectures on Types of Marital Separation*, *Institute of Advanced Arab Studies*, 1985, p. 131.
77. Narrated by Abu Dawud in his *Sunan*, Book of Divorce, Chapter on a Man Taking Back His Wife Without Witnesses, (Hadith: 2186, 2/257), verified by: Muhammad Muhyi al-Din, with commentary by

Kamal Yusuf al-Hout, *Dar al-Fikr*; and by Ibn Majah in his *Sunan*, Book of Divorce, Chapter on Taking Back (al-Raj'ah), (Hadith: 2025, 1/65), through the chain of Ja'far ibn Sulayman, from Yazid al-Rishk, from Mutarrif ibn 'Abd Allah, that 'Imran ibn Husayn was asked and he mentioned it. The wording is that of Abu Dawud. The hadith is authentic; its narrators are those of the two Shaykhs (al-Bukhari and Muslim) except for Ja'far ibn Sulayman al-Dubay'i, who is only in Muslim. Yazid al-Rishk is ibn Yazid al-Dubay'i. See *al-Muqarrar 'ala Abwab al-Muharrar* (2/209).

78. Narrated by Ibn Abi Shaybah in his *Musannaf*, Book of Divorce, Chapter on Separation and Taking Back with Witnesses, (Hadith: 17781, 4/60).
79. Ibn Hazm, *Same Source*.
80. Muhammad ibn Jarir ibn Yazid ibn Kathir ibn Ghalib al-Amili, known as Abu Ja'far al-Tabari, *Tafsir al-Tabari (Jami' al-Bayan), Mu'assasat al-Risalah*, edited by: Ahmad Muhammad Shakir, 1st ed., 1420 AH – 2000 CE, Vol. 23, p. 444.
81. *Al-Qawanin al-Fiqhiyyah*, Op. Cit., p. 153.
82. [lxxxii] *Al-Mughni*, Vol. 7, Op. Cit., p. 503.
83. [lxxxiii] Narrated by al-Bayhaqi in *al-Sunan al-Kubra*, Book of Testimonies, Chapter on the Judge's Ruling Not Binding the Plaintiff or Defendant, and Not Making the Lawful Unlawful or Vice Versa for Either of Them, (Hadith: 20537, 10/252). It is also in the *Sahihayn*: "But the oath is upon the one against whom the claim is made."
Al-Bukhari (No. 2514) and Muslim (No. 1711). Imam al-Nawawi also cited this hadith in *al-Adhkar* (p. 447) with the wording: "If people were given according to their claims, some men would claim the wealth and blood of others; but the burden of proof is on the claimant, and the oath is upon the one who denies." He said: it is good (hasan) in this wording, and some of it is in the *Sahihayn*. See *Talkhis al-Habir* by Ibn Hajar (4/406).
84. "Lineage is established through a valid marriage, acknowledgment, testimony, doubtful marriage (nikah al-shubha), or any marriage annulled after consummation, according to Articles 32, 33, and 34 of this law."
85. Pursuant to the law issued on 31/12/1963, the implementation continued (regardless of Law No. 63-224 of 29/06/1963) of Ordinance No. 59-274 of 04/02/1959 regarding marriage and divorce, as well as Decree No. 59-7082 of 17/09/1959 containing the implementing regulations of this ordinance, unless it was repealed by the 1973 ordinance, which annulled all laws inherited from the French colonial system, effective from July 1, 1975.
86. See Supreme Court, Civil Chamber, 25/12/1989, File No. 57812, *Judicial Journal*, 1993, Issue 3, p. 71.
87. See Supreme Court, Civil Chamber, 16/02/1999, File No. 216850, *Legal Studies Journal*, 2003, pp. 102–106.
88. *Lisan al-'Arab*, *al-Misbah al-Munir*, *Mukhtar al-Sihah*, *al-Maghrib*, *al-Qamus al-Muhit*, and *al-Mufradat*, entry: (Q-R-ʾ) [root: قرء].
89. Muhammad ibn 'Ali ibn Muhammad ibn 'Abd Allah al-Shawkani al-Yamani, *Fath al-Qadir*, *Dar Ibn Kathir*, *Dar al-Kalim al-Tayyib – Damascus, Beirut*, 1st ed., 1414 AH, Vol. 1, p. 270;
Bada'i' al-Sana'i', Vol. 3, p. 193;
Al-Qurtubi, *Al-Jami' li Ahkam al-Qur'an*, *Dar al-Kutub al-Misriyyah – Cairo*, 2nd ed., 1384 AH – 1964 CE, Vol. 3, p. 113;
Mughni al-Muhtaj, Vol. 5, p. 80;
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Kashshaf al-Qina', Vol. 5, p. 417;
Al-San'ani, *Subul al-Salam*, *Dar al-Hadith*, Vol. 2, p. 249.
90. Malik ibn Anas, *Al-Muwatta'*, Book of Divorce, Chapter on What Has Been Reported About "Qurū'" in the Waiting Period for Divorce and Divorce During Menstruation, (Hadith: 2140, 4/830).
91. *Kuwaiti Encyclopedia of Fiqh*, Vol. 33, p. 27.
92. *Surah Al-Baqarah*, Verse 228.