THE LEGAL REGULATION OF ELECTRONIC DIVORCE

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Abstract - This study examines e-divorce as a manifestation of the digital transformation in family relationships by defining the concept and distinguishing it from traditional divorce, and by analysing the position of the UAE legislature on the matter in light of the Personal Status Law. It also addresses the legal issues associated with proving it by examining traditional and modern means of proof, such as acknowledgment, testimony, records, and electronic signatures, as well as the decisive oath. The study concludes that the validity of e-divorce is contingent upon the proof of intent and the validity of its attribution, alongside the need for legal safeguards that keep pace with technological advancements and ensure the protection of family stability**.**

Keywords - Online Divorce, Means Of Proof, Electronic Signature, Electronic Record, Declaration, Certificate, Solemn Oath, UAE Personal Status Law, Family Relations, Digital Evidence.

I. INTRODUCTION

In Islamic law, the bond of marriage is held in high esteem, as it is founded on affection, compassion, and stability. The law has established precise provisions to ensure that marriage fulfills its objectives of building families and preserving society. Nevertheless, Islamic law has taken into account the disputes that may arise in this relationship and hinder its continuation, and has therefore permitted its dissolution in accordance with specific regulations. Among the most prominent of these is divorce, which is expressed through various means reflecting the husband's will, such as explicit verbal declaration, written documentation, or a clear gesture in cases of incapacity.

With rapid technological advancements and the widespread use of modern means of communication, new forms of conducting certain legal transactions have emerged, including e-divorce, which is carried out through various digital media such as text messages, email, or other means of communication. This has led to a shift in the expression of intent from traditional forms to new digital forms, reflecting the interaction between legal rules and technological developments in the field of family relations.

1.1. Problem of the Study

The central issue of this study revolves around the extent to which e-divorce is recognized in light of Islamic Sharia law and contemporary legislation, particularly the position of the UAE legislature on the matter, and the questions it raises regarding its validity, legal force, and means of proof in the context of technological advancements.

1.2 Methodology

This study employs a descriptive-analytical approach by presenting and analysing religious and legal texts related to e-divorce, as well as a comparative approach by reviewing the opinions of jurists and various legislations, in order to arrive at a comprehensive legal framework on the subject.

1.3 Importance of the Study

The significance of this research lies in its examination of a contemporary phenomenon linked to the impact of technological advancement on family relationships, particularly with regard to the trend of divorce via electronic means, and the resulting jurisprudential and legal issues that warrant study and analysis. This topic is particularly relevant given the widespread use of modern communication technologies and the resulting shift in methods of expressing legal intent, which necessitates defining the nature of electronic divorce, distinguishing it from traditional divorce, and determining its regulations and consequences. The importance of this research is further underscored by the differing positions of jurists and contemporary legislation on the matter, necessitating its grounding in both Sharia and law to achieve a balance between keeping pace with technological advancements and safeguarding the stability of the family and society.

II. THE NATURE OF ONLINE DIVORCE

Given the technological advancements we are currently experiencing in all areas of life, it was inevitable that these developments would affect family life. Consequently, new methods and means of divorce have emerged, in keeping with the times we live in and the advancements in modern electronic communication (mobile phones and email). This occurs when a man sends a message to his wife via phone, or verbally informs her that she is divorced, or uses one of the phrases that constitute divorce, or through the use of written, audio, or video email—or a combination thereof. This is known as electronic divorce.

Divorce in the Language: Divorce is linguistically defined as derived from the root "ALTALQ"

meaning to send away or to leave. It is used to denote the lifting of a restriction or the removal of confinement, and it also refers to leaving or parting from something. This includes its use in the context of leaving one's wife or departing from a place (Abu al-Basal. 2012. p. 9).

Divorce in Technical Terminology: Divorce is defined in the technical terminology of Islamic jurists in various ways depending on the school of thought, although they essentially agree that it is a means of terminating the marital bond. According to the Hanafi school, it refers to the removal of the legal bond established by the marriage contract, thereby ending the marital relationship. As for the Maliki school, it is viewed as a legal status that results in the cessation of the husband's permissibility to have sexual relations with his wife according to specific conditions. In the Shafi'i school, it is defined as the dissolution of the marriage contract through the utterance of the word "divorce" or its equivalent, as an act within the husband's authority that results in the severing of the marital bond. The Hanbali school, however, views it as the complete or partial dissolution of the marriage contract, with the prescriptive ruling varying according to circumstances; it may be permissible when necessary and disliked when not, and its ruling may change depending on the harm or benefit resulting from the continuation of the marriage. (Hussein. 2023. p. 858)

Based on the foregoing, it is clear that divorce is a legal and religious institution intended to terminate the marital bond in accordance with specific regulations, and that its essence lies in the expression of the will to end the marital relationship through valid means. It also follows that the validity of a divorce is not limited to a specific formal procedure, but rather depends on the presence of a valid intention and its expression through a means that clearly conveys it, thereby fulfilling the legislator's intent in regulating the dissolution of the marital relationship.

Legal Definition of Divorce: The UAE legislature addressed the definition of divorce in the provisions of Federal Decree-Law No. (41) of (2024) regarding the enactment of the Personal Status Law, stipulating in Article (53) that divorce constitutes the termination of the marriage contract by the husband's will through the use of words indicating such intent. The text also distinguishes between two types of expressions used to effect divorce: the explicit expression, which implies divorce in and of itself, and the figurative expression, which may imply divorce or other meanings, and is considered valid when accompanied by the intention to effect divorce.

It is clear from the text of Article 53 that the UAE legislature has adopted a framework based on two fundamental elements for the occurrence of divorce: intent and the means of expressing it, as it makes the basis for the dissolution of marriage the husband's will coupled with words indicating it, reflecting an approach aimed at regulating this act and not leaving it without specific controls. It is also evident from the text's distinction between explicit and figurative language that the legislature has made a precise distinction in terms of the strength of the implication; for explicit language produces its legal effect as soon as it is uttered, without the need to verify intent, whereas the validity of figurative language depends on the establishment of the intent to effect divorce, which highlights the role of intent as a complementary element in this type of language. This regulation demonstrates the legislator's commitment to striking a balance between protecting family stability and curbing the abuse of rights, and recognizing the husband's right to terminate the marital relationship within a disciplined legal framework based on the clear expression of intent and the arrangement of its consequences.

The Concept of Electronic Divorce:

Electronic divorce refers to the termination of the marital bond at the spouse's will through the use of modern means of communication, whereby this will is expressed through various digital media, whether verbally via calls or in writing via electronic messages in their various forms, such as mobile phones, email, and messaging apps. (Hussein. 2023. 586)

Electronic divorce is also viewed as a new form of divorce, in which the role of the electronic intermediary is highlighted as a means of conveying and executing the will without having an independent influence on its creation, as its role remains limited to enabling the transmission of the expression of divorce in the digital environment, which distinguishes it from traditional divorce in terms of the means rather than the legal nature. (Al-Muraimi. 2025. p. 145)

Consequently, this type of divorce is characterized by the manner in which it occurs, as it may take place without the direct physical presence of the spouses and across a geographically dispersed scope, reflecting the shift of means of expressing intent from traditional to electronic forms within the context of the evolution of contemporary legal relationships. (Hussein. 2023. 587).

Electronic divorce encompasses various forms of terminating a marital relationship that are carried out via digital media, whether through sending, receiving, or storing documents using modern communication technologies or similar means, such as data exchange systems, email, and other electronic tools. This form of divorce differs from traditional divorce in its reliance on an electronic medium used to convey and execute the parties' intent, which gives it a unique character in terms of how it occurs, as it often takes place when the spouses are geographically separated, though in some cases it can be achieved through direct communication. Furthermore, the role of this medium is limited to that of a technical tool, such as computer programs or other electronic means used to

create, send, or receive messages without direct human intervention in their content. This may give rise to issues regarding the ease with which divorce can be initiated, the possibility of its denial, and difficulties in proving it, which may affect the stability of the marital relationship and its associated legal and social consequences. (Abu al-Basal. 2012. p. 10)

It is clear that e-divorce does not differ in essence from traditional divorce in terms of its reliance on the will of the spouse; rather, it differs in the means of expression, which has shifted to the digital environment. Consequently, its validity hinges on the existence of a genuine will that can be verified as belonging to the person in question, which raises issues regarding proof and the potential for manipulation or identity theft. Furthermore, the absence of a physical presence may contribute to hasty decisions, necessitating a legal framework that balances recognition of this method with ensuring its validity and protecting the rights arising from it.

There has been widespread debate among contemporary jurists regarding the validity of divorce through one of these methods, which they have termed "electronic divorce." Most legislation still suffers from a severe lack of provisions addressing this issue, and researchers face a scarcity of references to help them achieve their objectives. Therefore, through this research, we aim to compile the prevailing views in contemporary Islamic jurisprudence and assess the extent to which the Sharia judiciary is influenced by them in matters of personal status. We will also examine, by way of example, current practices in some Arab countries, Our approach involves reviewing published research and proceedings from conferences and seminars to develop practical solutions and guidelines that alleviate the difficulties faced by Muslims regarding this issue, upon which family life is built or destroyed. We will highlight a set of contemporary jurisprudential opinions, which can be summarized into two main views as follows:

The first opinion: This opinion tends toward restricting this matter and viewing it with caution, given the ease with which divorce can occur through these rapid means, as well as the difficulty in proving it, and the fact that anyone of weak character can circumvent it. This is the view held by some contemporary jurists and scholars, such as Sheikh Dr. Muhammad Ahmad Salih al-Salih, Professor of Fiqh at Imam Muhammad bin Saud University in the Kingdom of Saudi Arabia, who stated: "Allah, the Exalted and Glorious, has bestowed upon us the blessing of marriage and made it a sacred bond. If marriage holds such a lofty status, it is absolutely impermissible to dissolve it electronically, for this constitutes a form of frivolity and recklessness. Consequently, divorce through such means is invalid and does not take effect, and it is considered an innovative form of divorce; a group of jurists have adopted this opinion). (Al-Ashqar. 2000. p. 104)

Sheikh Hamad Al-Razeen, a judge at the General Court in Jeddah, also opined that ruling on this type of divorce opens the door for weak-willed wives to divorce themselves, circumventing Islamic law and civil law by using modern electronic means. One case involved a wife who deliberately sent a divorce message from her husband's phone to her own, thereby fabricating a divorce from him. In such cases, the judge must address the matter by summoning the husband for questioning, and the burden of proof lies with the wife to verify the authenticity of the message and confirm that it was sent by her husband. (Al-Ashqar, 2000)

The second opinion: This opinion leans toward the validity of such a divorce. Sheikh Dr. Al-QasabiZalat—Professor of Fiqh at Al-Azhar University and a member of the Islamic Research Academy—stated that divorce, according to the prevailing opinion among jurists, requires explicit verbal expression. For example: - If a man says to his wife, "You are divorced," the divorce takes effect, whether in her presence, via a letter sent to her, or via a phone call, provided she recognizes his voice. Therefore, an electronic divorce is valid and counts as a divorce if the husband is asked and admits it, and the wife confirms this. (Al-Ashqar, 2000, p. 109)

This was supported by Sheikh Dr. Ahmad Hamoud Karima—Professor of Islamic Law at Al-Azhar University—who holds that divorce is effected by explicit speech, clear writing, or an understandable gesture, noting that if the divorcing party acknowledges the divorce via the internet, mobile phone, or other means, it is a valid divorce, and these methods are considered legitimate forms. (Al-Ashqar, 2000)

Sheikh Dr. Nasr Farid Wasil, former Grand Mufti of the Arab Republic of Egypt, has ruled that divorce differs from the notarization of marriage contracts, because divorce is initiated by the individual himself; thus, it is possible to carry it out via the internet or a mobile device, but it too requires notarization so that the wife can verify her divorce, so that if she wishes to marry another man, she will have proof of her divorce. If the husband denies the divorce that took place via the internet or mobile phone, the notarized, witnessed, and sent document serves as proof of the divorce. (Al-Ashqar. 2000. p. 111)

Sheikh Dr. Abdulrahman Al-Sanad, Head of the Comparative Jurisprudence Department at the Higher Institute of Judiciary at Imam Muhammad bin Saud Islamic University, also permitted the contract between absent parties, as both parties are physically absent but enter into the contract as if they were present, and each hears the other, just as the witnesses hear them when they pronounce their consent and acceptance regarding the marriage. He noted that the emergence of certain technologies can reduce the risk of forgery, such as one party seeing the other via a

computer screen connected to the internet, which displays the image of both parties. The contracting parties may also present their respective evidence obtained through websites. (Al-Ashqar, 2000)

Accordingly, some have permitted divorce via the internet, whether verbally or in writing. If the husband utters the words of divorce with the intention to divorce, it is legally valid, because divorce does not depend on the wife's presence, consent, or knowledge, nor does it depend on witnesses; it takes effect as soon as the husband utters it, provided the conditions are met. If the husband writes a divorce to his wife with the intention of finalizing the divorce, the divorce is finalized.

III. THE LEGAL VALIDITY OF ONLINE DIVORCE UNDER UAE LAW

By its very nature, e-divorce must be subject to documentation and verification procedures before the competent judicial authorities, given the potential for disputes regarding its denial or claims that it took place via modern means of communication; this makes the issue of proof a fundamental element in this context. Furthermore, the legal and religious framework is based on the necessity of officially registering and validating the divorce after the court verifies that it was issued of one's own free will, thereby establishing its legal effects from the date of its occurrence, including the commencement of the waiting period. Electronic divorce is no exception to this regulation, as it is subject to the means of proof established by Sharia and law, enabling the judiciary to verify its validity and determine its legal consequences. (Abu al-Basal. 2012. p. 29)

The UAE legislature has addressed the regulation of divorce provisions in Federal Decree-Law No. (41) of (2024) regarding the enactment of the Personal Status Law, where Article (54) stipulates that divorce is effected by the husband verbally or in writing by any means, and, if unable to do so, by a clear gesture; It also requires, for the divorce to be valid, that it be directed at a wife in a valid marriage, reflecting a legislative trend toward expanding the means of expressing the intent to divorce to keep pace with developments in communication methods, while maintaining the fundamental requirements for its validity.

It is evident from the text of Article 45 that the UAE legislature has adopted a flexible approach in defining the means of expressing the intention to divorce, as it has not limited them to verbal expression but has expanded their scope to include writing in its various forms, thereby allowing for the inclusion of electronic means within its legal framework. It is also clear that the text arranges the means of expression in a progressive order, beginning with oral expression, followed by written expression, and then a gesture when the previous two means are unavailable, reflecting consideration for varying practical circumstances. Conversely, the legislature has conditioned the validity of divorce on the existence of a valid marriage, thereby confirming that its legal effect arises only within the framework of an existing marital relationship, which helps regulate this act and achieve stability in family relationships.

The means of proving an electronic divorce include admission, testimony, records, electronic signatures, and a decisive oath. These means will be addressed in turn as follows.

First: Admission:

Admission is considered one of the most important means of proof in jurisprudence and law. It is defined as a person's acknowledgment of a right against them before a judicial authority, which entails legal consequences for them. It is not limited to being a mere statement but combines both statement and declaration. Its strength lies in the fact that it emanates from the will of the confessor himself, which grants it special authority as evidence, as it is considered conclusive against him and binding upon him regarding what he has admitted, and it is relied upon to resolve the dispute whenever it meets the conditions of validity. (Hussein. 2023. p. 608)

The importance of the admission is evident in the field of electronic divorce, where it is relied upon whenever it is issued by the spouse confirming the fact of the divorce, whether before the court or outside it, and takes the form of the spouse notifying the court or the opposing party of the occurrence of the divorce, along with a statement of the means of communication used, the time and place, and the manner of its issuance, enabling the court to verify the validity of the event and determine its legal consequences. (Abu al-Basal. 2012. p. 30)

The acknowledgment is only effective if specific conditions are met, most notably that it is issued by a person of full legal capacity and of their own free will, free from coercion; that it expresses a true fact and does not contradict the apparent circumstances; and that it relates to a provable right and is relevant to the dispute, in addition to the fact that the person making the admission does not deny it, which ensures its validity as evidence and prevents its misuse. (Khatib. 2020. p. 37)

Second: Testimony

Testimony is a means of proof whereby a person makes a statement before a judicial authority to establish a right of one party over another in a manner that conveys certainty and conviction, thereby enabling the court to verify the facts of the dispute. In terms of its legal status, testimony is established as a duty of sufficiency to be fulfilled by those who meet its conditions; it may become a specific duty when the witness is designated and there is no one to take their place. It is also considered a legal and legitimate obligation that must be fulfilled upon request in accordance with established regulations, thereby

ensuring the protection of rights and the realization of justice. (Abu al-Basal. 2012. p. 32)

Testimony in an electronic divorce is established when two just witnesses, or one man and two women, testify before the court that the husband has divorced his wife, whether this occurs in their presence or based on a statement issued by him, such as his declaration of divorce verbally or via text message or email, provided these means are accompanied by evidence supporting their authenticity. Jurists have differed regarding the number of witnesses required to prove divorce by written declaration, with a group of Maliki, Shafi'i, Hanbali, and other scholars holding that the testimony of two just witnesses is required, based on the possibility of forgery in the written document and the insufficiency of relying on handwriting alone, while the Hanafis permitted the testimony of a single witness, considering that the matter concerns a report in which the statement of a single just person is accepted. However, the prevailing view tends to require two just witnesses in this case, based on the principle that the marriage contract is established with certainty and can only be annulled by evidence of equal strength and certainty. (Hussein. 2023. p. 612).

Third: Electronic Records and Electronic Signatures

An electronic record is defined as any entry, contract, or message of information created, exchanged, or stored by electronic means within the framework of transactions conducted via digital data exchange technologies, whereas an electronic signature is defined as a set of digital data attached to or associated with a message, enabling the identification of its owner and indicating their consent to its content, with the presumption that it originates from them and that the record is free from any alteration. (Abu al-Basal. 2012. p. 35).

The electronic signature takes various forms, such as smart cards and biometric data like fingerprints, iris scans, and digital signatures, and may be relied upon in personal status matters whenever it indicates a valid intent, such as in correspondence regarding the initiation of divorce. It is also considered a legal presumption that contributes to establishing the occurrence of divorce without being conclusive, as it may be rebutted and is subject to the judge's discretion; disputes may arise regarding its integrity, such as claims of tampering or hacking, which necessitate the use of technical expertise to verify its authenticity. (Khatab. 2020. p. 44).

In light of the rapid technological development in electronic transactions, questions have arisen regarding the admissibility of these means as evidence, and legal scholarship has divided into two schools of thought: one limits means of proof to those expressly provided for, while the other permits the use of any means that serves to establish the truth. According to this school of thought, electronic records and signatures may be considered written evidence provided they meet the conditions of reliability, namely the readability of the data, the ability to store and retrieve it, and the guarantee that it cannot be altered or tampered with, thereby granting them significant evidentiary weight before the courts. (Hussein. 2023. p. 614).

Fourth: The Decisive Oath

The decisive oath is a means of proof resorted to when the plaintiff is unable to present evidence supporting their claim; it is directed at the defendant to resolve the dispute by appealing to their conscience, based on the principle that the burden of proof lies with the claimant and the oath with the denier. Its importance in e-divorce cases is particularly evident in situations where the defendant denies the occurrence of the divorce or where it cannot be proven by other means, such as admission or testimony. In such cases, the plaintiff—whether the husband or the wife—may request that the other party take an oath, and the act of taking or refusing to take the oath has legal consequences that affect the outcome of the case. This reflects the flexibility of the legal system in addressing evidentiary difficulties by granting the judge discretionary authority to administer the oath and evaluate its results, with the possibility of administering it even in the absence of the opposing party or through a representative, thereby achieving a balance between protecting rights and resolving the dispute. (Khatab. 2020. pp. 40–41).

IV. CONCLUSION

The key findings of this study can be summarized, and a set of recommendations can be proposed to help develop the legal framework governing this issue, in line with developments in the digital environment.

1. It appears that e-divorce does not differ in essence from traditional divorce, as it is based on the will of the spouse; rather, it differs in the means of expression, which has shifted to digital media, thereby creating legal issues related to proof and verification of its issuance.
2. The research showed that the UAE legislature has moved toward expanding the means of effecting divorce, permitting it to be issued in writing by any means, thereby opening the door to the use of electronic means within the legal framework governing divorce.
3. It is clear that traditional means of proof, such as admission and testimony, retain their evidentiary weight in proving electronic divorce, alongside modern means such as electronic records and signatures, which are considered evidence subject to judicial discretion.
4. The study concluded that the decisive oath is a decisive means when proof is unavailable, reflecting the flexibility of the legal system in

addressing the difficulties of proof in the digital environment, while granting the judge discretionary authority in weighing the evidence.

In light of the findings, and given the accelerating pace of digital transformation, the study has identified a number of recommendations, which we summarize below:

1. The need to establish more detailed legislation that explicitly defines the provisions governing e-divorce and the rules for proving it, thereby reducing ambiguity and inconsistencies in judicial application.
2. Strengthening the role of technical expertise in cases involving digital evidence, to ensure its authenticity and minimize the risk of tampering or forgery.
3. Raising legal awareness of the risks of using electronic means to initiate divorce without proper controls, given the impact this has on family stability.
4. Establishing precise technical and legal controls regarding the validity of electronic records and signatures, thereby striking a balance between keeping pace with technological advancements and protecting family rights.

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