The Exposure of Rule “LaZarar” in Divorce and Relevant Issues

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INTRODUCTION

As the above all creatures, human, is dependent on a society that lives, so always seeking perfection. The family is the cornerstone of society. To prevent loss it is essential that relationships and behavior within the framework of the man considered the legal aspects it is. Laws of God the family is the basic unit of society Sometimes hurt the community. And sometimes causes irreversible harm to individuals, families and ultimately the community. For example, there are children of divorce and its consequences. On the other hand, According to the Iranian laws, especially family law personal right now, based on the teachings of Imamie; the role of religion is highlighted. The importance and necessity of this study; In order to resolve family problems is obvious considering infrastructure the Iranian of Muslim beliefs. The divine law - in general-Shiite jurisprudence - in particular in this research attention-Both the "LaZarar" (loss) and "LaZarar" (harm) is prohibited. Terms of “LaZarar”; According to Quran, the Sunnah, consensus and rationality is Indicates the importance of this issue . By examining the role of law in family law - in particular on issues relating to divorce - We find Whenever the woman from the first sentence (i.e., allocating the right to divorce her husband) is damaged, How can deviate from that sentencing And how given, permission to refer to the second sentence. To access this purpose we’ve provided Entrie softthispaper In two separate discussions. Given that explore the impact of the rule on a particular issue, Needsto Understanding the rules and conditions its application. The first concept is the in short, we allocating "means Rule “LaZarar”". In the second focus the main topic of discussion.

1- Means the rule of “LaZarar”: Rule “LaZarar” is one of the known rules of law that is not acceptable in Islam for any loss or harm [9]. Some - Sheikh Tusi, etc., have said that Rule “LaZarar” and its application in trading and rule 'distress and constriction "is related to worship. This opinion is not known; For example, this rule can expand the deceased Mirab dolfattah Maraghi (Maraghi, undated, page 305 and following). The rules of statutory duty of all law-provisions applicable to civil responsibility And several jurists have invoked the appropriateness of the

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discussion, we have introduced the concept of the rule and are explained briefly: And those interested in further reading on this subject, we refer to the extensive literature in this field.

1-1 The meaning of “zarar”(lose) and “zarar”(harm) rule:

The difference between zarar and Zarar various opinions have been expressed, they are briefly mentioned below: One is to review applications in terms of zarar and Zarar Islamic sources indicate that “Loss” includes all damages and losses, on the other, but “Zarar” related to cases where a person with a legal right or permission to enter another zarar in modern terms such as “abuse of right” can be interpreted. The Prophet of Islam Muhammad’s sayings calls the “disadvantages”, and goes without saying that he wanted to use his right to make the damaged home (Sheikh Ansari, Volume 2, undated, p 460). Some have said that the “zarar” if they damage someone else will and he will benefit from it, but “Zarar” means that the damage to another does not avail itself of nasty losses. Ibn Athirin the book Alnhayh another idea expressed “Zarar” verb raises two sides, The disadvantage to this is that no one shall retaliate with a loss [3].

Principal conductor from late Sheikh is quoted the opinion of the supreme leader and continues to work for a long time used. And that means going back deliberately in harm (ibid, p 62). However, considering what happened, certainly we can say that the inclusion of the presence or absence of intent to harm or blame lazarrar rule is different. It is intended to negate any loss whether it be voluntary or involuntary.

1-2 the meaning of “la” in the rule:

Basically, in these cases, “La” is used to negate genus Come on every sentence that implies that La (i.e. what the “La” is placed).In general, the outside world does not exist. There’s no man in the house. “L.A” in the same sentence, negates the possibility of any man in the house and the listener discovers that certainly is no man in the house. We shall see when it is said: ”Lazarrar and La zarar on Islam”. Is the concept and it means that after the conversions to Islam, there is no other external physical harm them? Such an interpretation is certainly the wrong; because we see clearly that the Muslim losses in the external world and human beings in various ways every day cause harm to others are wrong. Furthermore, if the above interpretation would be that bad out there in the universe, what is the connection to God’s will? What God has something to describe foreigners? And philosophy primarily on what it could be? The incidence of such errors, the jurists have tried various dimensions and angles “La” is mentioned in the hadith is interpreted in such a way that almost seems to be a legislator [11]. To facilitate comprehension, the five famous theory on the matter is, we will briefly discuss.

2- The general rule of thumb Lazarar:

Using all the ideas seem that means it is safe for short Lazarar rule of thumb is illegitimate in Islam, Loss and illegitimacy, as well as the legislative process is As well as the level of law enforcement. Prophet Muhammad with the “La zarar and Lazarrar on Islam”, despite the loss, destruction has announced. Thus, it follows that the first word is “La” in the Lazarrar and Lazarrar Secondly dedicated to personal loss, but a loss is also included. And thirdly, whether the provisions of Islamic law and the statutory obligation, based on a denial of the public’s expense and the basic precepts of Islam in general, the principles of non-compliance is a popular losses And social relations are not religious in any act detrimental to sign. So Lazarar rule of thumb, in addition to the personal loss of the primary reasons why the secondary can limit circle indicates a general policy provisions in primary legislation as well. In other words, rule of thumb Lazarar As stated in the task order forbidding people from harm on each other, and the sequence of actions is not deleterious Eagle, Rather, it is useful to begin with the commandments of God and the duty to state whether the negation of a loss on the disposition of the people was. Secondly, if social laws and regulations in certain cases lead to the loss of some by some others, the rules have been removed.

3- Cases and instances of the rule of thumb LazarrarIn matters relating to divorce:

Divorce is ritual whereby a man’s permission or a court orders, the woman who frees him permanently in the parity constraint. Divorce will only be the husband or his agent and does not approve the woman. But this does not mean that a woman can never have any effect on the divorce court, divorce or not. The woman has the right to determine the conditions of forced men to seek divorce [6]. Divorce is one of the most important issues that will connect with the rule of thumb Lazarar, Assuming the absence of a divorce law, The other the woman divorce request by the ruler; In this review, each of them respectively in a separate section will review it.

3-1 Assumptions of divorce in the absence of the husband:

Some Lazarar by resorting to rule of thumb conservation of parity for a woman who is alleging that her husband is absent, missing. Cause "harm" is that the ruling could be given the circumstances. Examined in more detail, the wife divorces her. But the assumption that the availability ruling in or ruling cannot be in charge of such things, Late Seyed Kazem Tabatabai Yazdi writes: "So long as the trial judge, if the judge is not possible or cannot access it grants tenure, It appears that all believers will be deputy governor; Come on, that’s
what this assumption because he parity conservation. Should clear up the situation, wait, been faithful with what was said by the general public as well as the rule of thumb (Tabatabai Yazdi, J 1, undated, page 71, issue 13). As you will see, they believe that by invoking the "rule of thumb Lazarar", referring to the ruling are not even supposed to refer to all believers are. Here are some of the drawbacks jurists including Lazarar rule of thumb of proven judgment in the case of sentence of God, have been raised. That such an issue would be the establishment of new law Or it is necessary to allocate the majority. Of course, this problem has been answered [5]. However, according to the above rule of thumb Lazarar those who say there are positive role. If before the expiration of the period referred them than recourse to divorce And can express their will Continue to destroy marriage, divorce effects [14] The provisions of the Civil Code of divorces wife missing on Imam is (Najafi, vol 32, no till, page 288 onwards and Mousavi Khomeini, [12], attests Imam) The formalities almost a year after the publication of the advertisement and the advertisement is not seen in the books offegh.

4 Divorce by the judge and asked the woman:

Article 1130 of the Civil Code in such a way Indicating that the reference to "rule of thumb Lazarar" to force the husband to divorce his wife for a divorce or disposal may be governing. This Article stipulates that "in cases of divorce the woman can go to the judge's ruling. If it is proved to the court that the continuance of parity can cause distress and constriction to prevent loss and constriction, the couple forced to divorce and if possible not be given permission JUDGE divorce. "In 1935, the term of this material may be Citing "Lazarar rule of thumb" to understand. Article 1130 of 1935, "the current provisions of Article 1129 of the following Knew (hekmat nia and et al, Volume 2, 2009, p 167): "1.dmf fulfills the promise2 adverse interaction 3 incurable disease. "Seem to have chosen this tack by civil law from the religious fatwas as Syed Muhammad Kazim Yazdi is mentioned in his speech. (Tabatabai Yazdi, vol 1, no date, p 76).

4-1 Divorce request the women from legal perspective:

Islamic jurists have allowed some of the woman The ruling request and the reasons for divorce in the context from verses and hadith studies [14]. Husband from the parity violating perform tasks (such as charity and good socialization), whether due to the fault or no-fault law, if a marriage survive a difficult marriage and a woman's right to judge see the divorce. The ruling will be forced to divorce her husband and if the husband refuses impressive as it seems impossible to divorce the woman. "One woman can be a garment cover his genitals and feed for his vital right to subtract them" [14]. So that when a husband does not fulfill the rights of women and forced him to play not possible. The ruling forced the husband to divorce his If the husband refuses to divorce his the woman's divorce ruling. This divorce is religiously correct. Moreover, in Islamic law, a woman who has lost her husband Away. The circumstances from divorce court and the woman can be. According to the stipulation from husband to divorce his lawyer, you realize that some of his or her absolute divorce.

4-2 divorces the woman's request from a legal perspective:

Articles 1129 and 1130 of the Civil Code in the circumstances apply for a divorce; the woman has written is based on Islamic law. 1129 Article "If the husband refuses to grant her alimony and failing to implement and requires the court to give alimony, a divorced woman can go to the governor'sand forced her husband to divorce his ruling. Also, in case of failure of the husband provide alimony, "Section 1130 provides: "In the case of the woman can divorce is referred to JUDGE: If it is proved to the court that the continuance of parity would be harm. To avoid the expense of having to divorce the couple and if possible not be given permission JUDGE divorce. "In addition to the foregoing, the Civil Code, following the jurisprudence of the woman that her husband had been missing for four years allowed to be absent from the divorce court (Article 1029). The woman for a divorce lawyer in civil law as Islamic law is accepted (Article 1119). Of course, those where the law is not based on rational procedures and identify and apply conventions.

Conclusion:

What addressed in this study, an attempt to reveal the legal rule "Lazarar" In matters of divorce. The outcome of happenedobtain results which are placed below the view of the beholder: After reviewing the documentation, I found that the scope of this rule apply rule "Lazarar" general and absolute territorial and not subject to any conditions and if the context is provided, is ongoing. This result simply from the fact that one of the jurists cite the rule Lazarar in all fields of law, including acts of worship and transactions, contracts enforcement liability, duty or statutory provisions and the like, and the other provisions of the rule Lazarar on all the other evidence, the is used. So in any case where a member of the family of is affected, citing the rule Lazarar are referring to in its second sentence there. Lazarar rule regarding divorce and the issues around which the legislature has repeatedly noted and that the right to divorce her husband, never a license to harm other people, including the wife is not. Among the most important cases in which the divorce will connect to the base Lazarar. A discussion on the assumption of absence to divorce her husband and another woman's divorce
request by the ruler; in this study we examine each of them, various positions in them during the registration and Rule Lazarar've analyzed. The interesting thing in all these cases was Where the losses caused by the absence of a husband or wife survival parity relationship when the couple refused to pay alimony and financial issues, and so is not limited; But the damage that the emotional, instinctual needs And prestige, it is possible for a woman to emerge as intended And by virtue of a warrant Lazarar rule to avoid or compensate for these losses is known to be applicable.

REFERENCES

[1] Quran
[16] Shaikh Ansari, M. bin Mohammed Amin, the osol al favaed, undated.