

Online Divorce and the Extent of Legislative Recognition under Family Law: An Analytical Study

الطلاق الإلكتروني وإشكالية الاعتراف التشريعي به في قانون الأسرة: دراسة تحليلية

GHERBI Soreya ♦

College of Law, University of Ain Temouchent,
Mediterranean Laboratory for Legal and Economic
Studies/ Algeria
Soreya.gherbi@univ-temouchent.edu.dz

Date of submission: 02/03/2026

Date of acceptance: 23/06/2026

Date of publication: 30/06/2026

Abstract:

This study analyses online **Divorce**, examining its concept, procedures, and underlying causes. It reviews Islamic jurisprudence, contemporary scholarly opinions, and Algerian statutory law. The research finds that Algerian Family Law does not explicitly regulate online marriage despite its prevalence, calling on lawmakers to clarify its legal recognition or regulation.

Keywords: Online divorce; Challenges; Legal regulation.

الملخص:

تطرح هذه الدراسة الطلاق الإلكتروني باعتباره ظاهرة قانونية واجتماعية متنامية تفرض نفسها على واقع العلاقات الأسرية المعاصرة. ومن خلال تحليل أبعاده الفقهية والتشريعية، تكشف عن تعقيداته وإشكالاته العملية في ظل التحول الرقمي المتسارع. وتفتح هذه الظاهرة باب التساؤل حول مدى جاهزية المنظومة القانونية لمواكبة هذا التطور، وما يترتب عنه من آثار تمس استقرار الأسرة وحماية الحقوق.

الكلمات المفتاحية: الطلاق الإلكتروني؛ التحديات؛ التنظيم القانوني.

Introduction:

There is no doubt that technological advancement in the current era is rapid and also beneficial to the world as a whole. It provides individuals with everything they need with ease and at super-fast speeds.

♦ Author Sent

Soreya GHERBI

One of the most important and dangerous types of this modern technology is the internet, due to its exceptional ability to connect countries quickly, regardless of distances or lengths.

Through it, direct conversations can be conducted, whether through writing, chatting, or video calls. One of its dangers lies in the conversations among young people via chat, due to the deceit and deception that can occur to both parties.

Additionally, some consider the internet as one of the modern means through which the most important contract of all, marriage, is conducted. However, the fundamental principle in the conclusion of marriage is that it should be in verbal form of affirmation¹.

Acceptance, and both parties to the contract should be present in the contract session, in consideration of what is more appropriate and cautious for the purposes of marriage, getting to know each other, and formalizing and safeguarding rights².

This development has had a significant impact on individuals' social lives, resulting in strange customs that were not present or known in Arab societies in general and Algerian society in particular. Is it reasonable to dissolve marital bonds through these electronic means to the extent that we call it electronic divorce, and is this term permissible?

Given the seriousness of this matter, Islamic jurists intervene to address such developments and their complex issues, with differences arising among them regarding the legitimacy of electronic divorce.

Thus, it is legitimate for us to inquire about the legitimacy of divorce through modern communication methods, the most significant challenges resulting from this type of divorce, and the Algerian legislator's stance on all of this.

Addressing these challenges requires us to divide this research as follows:

First: The reality of electronic divorce.

Second: Electronic divorce between legitimacy and illegitimacy according to Islamic jurists.

Third: The extent of recognition by the Algerian legislator of this type of divorce.

First: The Reality of Electronic Divorce

¹ - See, Alaa Al-Din Al-Kasani, Bada'i Al-Sana'i fi Tartib Al-Shara'i, Vol. 2, Dar Al-Kitab Al-Arabi, Beirut, Lebanon, 1982, p.229; Abdul Raouf Al-Manawi, Al-Dardir Hashiya Al-Sawi 'ala Al-Sharh Al-Saghir, Vol. 1, Dar Ihya Al-Sunna, Cairo, Egypt, n.d., p.282.

² - See, Mohammed Kamal Al-Din Imam and Jaber Abdel Hadi Salem Al-Shafi'i, Personal Status Issues related to Marriage, Separation, and Children's Rights in Jurisprudence, Law, and Judiciary, Aleppo Publications, 2003, p.35

Online Divorce and the Extent of Legislative Recognition under Family Law: An Analytical Study

Divorce is generally defined as the termination of the marital bond immediately or eventually through specific wording, whether spoken, written, alluded to, or implied.

Electronic divorce refers to divorce initiated by the husband with the intention of divorcing his wife using modern means. It can also be divorce written or spoken by the husband to his wife using the telephone, internet, or any other modern means.

Electronic divorce cannot be limited to a single form due to the diversity of modern communication methods. It can occur through the husband's use of telegraphy, mobile phones, or the internet via email, Twitter, Facebook, etc.¹ This type of divorce may also occur through the husband uttering divorce words to his wife via camera, whether through email or Skype, etc. Some jurists have recognized this type, but the issue for them is divorce by writing, whether through fax, computer, or mobile phone. There is an ancient disagreement among jurists regarding divorce by writing, which they considered metaphorical electronic divorce. They stipulated certain conditions for such divorce to occur:

- The writing must be clear and easily readable.
- The message must be sent to the wife, with assurance that it was sent by the husband.²
- The husband must not be coerced when writing this message.
- The divorce phrases must be clear and unmistakable, using any known divorce terminology.
- The husband must have the intention to divorce his wife.
- The husband must approve it.

This is essentially what can be said about the concept of electronic divorce. We may inquire about the stance of Islamic jurists regarding this development, which we will elucidate in the following point.

Secondly: Electronic Divorce between Approval and Disapproval among Islamic Jurists:

Islamic jurists have differed in their opinions regarding electronic divorce, with some supporting it and others opposing it:

The first opinion: Dr. Sabri Abdul Raouf, a comparative jurisprudence professor at Al-Azhar University, supported this type of electronic divorce, stating: "Divorce through postal messages via the internet or

¹ - See, Alaa Al-Din Al-Kasani, *Bada'i Al-Sana'i fi Tartib Al-Shara'i*, Vol. 2, Dar Al-Kitab Al-Arabi, Beirut, Lebanon, 1982, p.229; Abdul Raouf Al-Manawi, *Al-Dardir Hashiya Al-Sawi 'ala Al-Sharh Al-Saghir*, Vol. 1, Dar Ihya Al-Sunna, Cairo, Egypt, n.d., p.282.

² - See, Mohammed Kamal Al-Din Imam and Jaber Abdel Hadi Salem Al-Shafi'i, *Personal Status Issues related to Marriage, Separation, and Children's Rights in Jurisprudence, Law, and Judiciary*, Aleppo Publications, 2003, p.35.

Soreya GHERBI

telecommunications is permissible if it is confirmed that the husband is the one who actually divorced his wife by admitting that he divorced her through one of these means," according to this opinion, proving this divorce is done through acknowledgment, which is considered the master of evidence¹.

Dr. Youssef Al-Ahmad, a faculty member at Imam Muhammad bin Saud Islamic University, also affirmed this. He stated: "Divorce occurs through expression or indication, whether in writing or through gestures, adding that writing via a mobile message or email falls into this category. If it is verified to be authentic and intended to be binding, then it is accepted." He further emphasized the importance of considering the conditions for divorce².

Most proponents of divorcing through modern communication means rely on the statement of Ibn Qudamah: "If divorce is written, and the husband's intention is to divorce his wife, then she is considered divorced because writing comprises letters that indicate divorce. Thus, if it is understood and intended as divorce, it is considered effective, just like verbal divorce, and because writing serves as the utterance of the writer."³

As for the second opinion: it rejects this type of divorce, where the husband uses modern devices. A recent fatwa from the Hashemite Kingdom of Jordan by Dr. Mohammed Akkam states that divorce through mobile messages or email may involve deception and fraud. Therefore, avoiding this unreliable method is preferable and safer for the contracting parties. Marriage contracts should be approached cautiously to protect the sanctity of marriages and achieve the objectives of Islamic law. Similarly, Dr. Waheba Al-Zuhaili holds the same view.

Al-Zuhayli argues that such a divorce is not considered valid, similar to the marriage contract, if the council does not gather the parties to the marriage contract from a guardian who is certain, along with two witnesses who are also certain, and it is necessary for the fiancée to carry a legal document with her photo on it, so that the contracting parties can be assured of the correctness of the procedures required by Sharia law.

Dr. Wahba Al-Zuhayli⁴ explained that the form of marriage that is happening nowadays among young people through the internet, where some

¹ - See, Ahmed Faraj Hussein, *Family Laws in Islam*, Vol. x, Part y, New University House for Publishing, Egypt, 2014, p.12.

² - Issawi Zahia, *Newly Introduced Provisions in Marriage Dissolution, Electronic Divorce, Intervention presented at the International Forum on Family-related Provisions between Constants and Variables*, 2014, p.326.

³ - See, Fareeda Sadek Zorro, *The Impact of Modern Technology on Jurisprudential Considerations, Divorce by Phone as a Model*, Article published on the website: www.yeheart.net

⁴ - Wahba Al-Zuhaili, *Rulings on Procedures for Contracts via Modern Communication Means*, 2003, p.73.

- See, Bab Al-Ulama Website, *Mobile Message Divorce is Not Permissible: 7035*, via the website: www.bab.com; Issawi Zahia, *Newly Introduced Provisions in Marriage Dissolution, Electronic Divorce*, Ibid., p.330.

Online Divorce and the Extent of Legislative Recognition under Family Law: An Analytical Study

talk to each other, get to know each other, agree to marry, and bring witnesses to the marriage contract in the absence of a guardian, is not permissible in Sharia, as the marriage contract must be concluded in the presence of the marriage council.

This is the same opinion adopted by the Islamic Religious Council of Singapore, which issued a statement rejecting recognition of divorce occurring through short mobile phone messages due to doubts surrounding it, making it difficult to identify the sender's identity or intentions.¹

Dr. Ahmed Abdel Rahim Al-Saieh also stated that divorce through modern technological means does not occur because divorce in Islam is one of the most hated lawful acts to Allah, and it is carried out in stages as commanded

- Nareman Ahmed Adnan, Electronic Divorce: www.syrianbar.org.

- The Algerian Family Law No. 84/11 was first issued on 09 Ramadan 1404 AH, corresponding to 09 June 1984 AD, and it was amended by Decree No. 05/02 dated 18 Muharram 1426 AH, corresponding to 27 February 2005 AD.- Issawi Zahia, Newly Introduced Provisions in Marriage Dissolution, Electronic Divorce, *Ibid.*, p.334.

- For further details, see Nareman Ahmed Adnan, Electronic Divorce, *Ibid.*

- For more detailed case facts, see Ihab Hassan Mustafa, Ahmed Fathi, Marriage and Divorce through Modern Communication Means, 2012, pp.117-118.

- Article 323 bis of the Civil Law states: "Proof by writing is established by the sequence of letters, descriptions, numbers, or any meaningful symbols or signs, regardless of the medium in which they are included, as well as the methods of transmission."

- Amani Ali Metwally, Legal and Sharia Controls and Scientific Problems of Modern Types of Marriage and Divorce, *Ibid.*, p.144.

¹ - See, Fareeda Zorro, Same reference; Issawi Zahia, Newly Introduced Provisions in Marriage Dissolution, Electronic Divorce, *Ibid.*, p.329.

- Contemporary jurists have varied opinions regarding the validity of conducting marriage contracts through the internet. The first opinion states that conducting a marriage contract via the internet is permissible. Advocates of this view include Sheikh Mustafa Al-Zarqa, Dr. Mohamed Raafat Othman, Dr. Mohamed Aqla, and Sheikh Badran Abu Al-Aynayn Badran. They argue that contracting through electronic means, such as the internet, fulfills the conditions of a valid marriage contract, such as verbal expression of offer and acceptance, mutual hearing and understanding between the contracting parties, presence of a guardian, presence of witnesses who hear the offer and acceptance, thus rendering the contract valid.

The second opinion prohibits marriage contracts through modern means of communication that convey speech verbally, including contracting via the internet. This view is supported by the Permanent Committee for Islamic Legal Rulings in Saudi Arabia, the majority of scholars at the Islamic Fiqh Assembly in Jeddah, and most scholars at Al-Azhar University. They argue that this method may involve deception of one of the contracting parties, and that marriage contracts should be conducted with precautions not needed in other contracts to preserve modesty and achieve the objectives of Islamic law. Dr. Wahba Al-Zuhaili clarifies that such marriages are not considered valid unless the marriage council gathers the contracting parties, a guardian is present and confirmed, and witnesses are also present and confirmed. The bride must also possess a legal document with her photo to ensure the validity of the required procedures according to Islamic law.

Most scholars at Al-Azhar University agree that this method of concluding marriage contracts is not valid in Islamic law, as it does not achieve the intended purpose of legitimate marriage, due to its peculiar nature and specific dangers that exempt it from the provisions of these modern means. Marriage contracts require more precautions than other contracts due to their permanent impact on women and to preserve the sanctity of modesty as prescribed by Islamic law. See, Fatwa of Dr. Raafat Othman on Analyzing Internet Marriage, *Al-Mujtama'* Magazine, dated 22/04/2004, Issue 1986, p.46; see, Badran Abu Al-Aynayn Badran, Marriage and Divorce in Islam, Youth Foundation of Alexandria University, Egypt, p.41; Abdel Sattar Abu Ghaddah, Coordination and Commentary on Decisions and Recommendations of the Islamic Fiqh Assembly, Volume 1, Part 2, Dar Al-Qalam, 1388 AH - 1988 AD, p.10; Wahba Al-Zuhaili, Rulings on Procedures for Contracts via Modern Communication Means, 2003, p.73.

in the Quran, making it not only impermissible but also an innovation of technology. Therefore, Muslims must refrain from tampering with family life.

The majority of these opinions, which are inclined towards rejecting electronic divorce, are not based on a single justification but rather refuse it because it violates the provisions of Islamic law. The main reason is the possibility of deception, and the major challenge lies in how to prove it.

This difference among scholars regarding the permissibility of electronic divorce leads us to question the stance of Algerian legislation on this matter, which we will clarify in the next point.

Thirdly: The extent of recognition by Algerian legislation of this type of divorce:

The amended Algerian Family Law came without any legal provision governing this type of electronic divorce, and the same applies at the level of Algerian courts. Statistics indicate the absence of such cases of divorce through modern means of communication in these courts¹.

This is in contrast to some countries that have recognized this type of divorce and have enacted specific laws for it. Even at the level of courts in those countries, there are several cases, due to the widespread prevalence of electronic divorce in Jordan. According to statistics and studies in the kingdom, there were around 450 divorce cases last year. This prompted the Chief Justice of Jordan to prepare a new draft law on personal status in order to regulate the issue of divorce via email or mobile phones, commonly known as electronic divorce, which is considered a juristic divorce rather than a legal one.

Most of the opinions that reject electronic divorce are based on multiple reasons, primarily because it contradicts Islamic Sharia laws. The main concern is the potential for deception, and the major challenge lies in proving it.²

This difference among scholars regarding the permissibility of electronic divorce leads us to question the stance of Algerian legislators on this matter, which we will discuss in the next point.

Thirdly: Recognition by Algerian Legislators of this Type of Divorce:

The Algerian Family Law, as amended, does not contain any legal provisions governing electronic divorce. Similarly, Algerian courts have not dealt with cases of divorce through modern means of communication, as statistics indicate the absence of such cases in Algerian courts .

¹ - Raafat Othman on Analyzing Internet Marriage, Al-Mujtama' Magazine, dated 22/04/2004, Issue 1986, p.46

² - See, Nareman Ahmed Adnan, Electronic Divorce, www.syrianbar.org

Online Divorce and the Extent of Legislative Recognition under Family Law: An Analytical Study

In contrast, some countries have recognized electronic divorce and enacted specific laws for it. For example, in Jordan, there has been a significant increase in electronic divorces, prompting the Chief Justice to draft a new law to regulate electronic divorce.

The Algerian legislator did not address the issue of electronic divorce explicitly in the Family Law. However, referring to the Civil Code, electronic writing is considered equivalent to traditional writing. Nevertheless, these provisions ¹primarily pertain to civil contracts like sales contracts, and applying them to marriage and divorce is inappropriate due to their unique nature and significance .

the Algerian legislator has not clearly stated its position on electronic divorce in the Family Law. It would have been preferable for the legislator to explicitly address electronic divorce in the Family Law to eliminate the ambiguity present in the legislation.

Conclusion:

A happy marital life is a dream that haunts everyone, and this happiness only comes when individuals feel that their future is secure. How can the future be secure in the case of an invalid marriage with consequences to be regretted, or because after marriage, one discovers that they are tied to someone they do not know or know nothing about, just because they met online?

We say that young men and women often suffer from disappointment after marriage as a result of pretending to be someone they are not during the engagement period. Often, the opposite becomes apparent after marriage, as many of them struggle to deal with and understand their partner despite the long engagement and formal acquaintance period. What then about acquaintances through the internet, which is often dominated by deception and lies?

We do not deny that modern means of communication facilitate our lives, but they can also turn it into a tragedy. Therefore, we see that online marriage and divorce are suspicious in terms of their validity.

Islamic law is most concerned with the contract of marriage and its dissolution, and it has defined and clarified its rules and foundations in a way that makes it easy for anyone to understand the conditions and limits of these provisions, which affect their lives and future. So how can we imagine

¹ - Issawi Zahia, Newly Introduced Provisions in Marriage Dissolution, Electronic Divorce, Ibid., p.332.

- See, Ammar Mohamed Kamal, Divorce through Modern Communication Means, Article published on the website: www.iqmag.net; Issawi Zahia, Newly Introduced Provisions in Marriage Dissolution, Electronic Divorce, Ibid., p.332.

Soreya GHERBI

all of this in the context of marriage and divorce through modern means of communication?

As for the position of the Algerian legislator, he did not even talk about electronic divorce in the Algerian Family Law, and we cannot infer his recognition or non-recognition of this type of marriage and divorce through modern means of communication from the Civil Law by equating electronic writing with ordinary writing in Articles 323 and 323 bis. Because marriage and divorce cannot be measured by sales or obligations between creditor and debtor, as marriage and divorce, as we said, have a special nature and a certain danger that makes them exempt from the provisions of these articles. Therefore, we call on our Algerian legislator to clarify his position on marriage and divorce through modern means of communication in the Family Law, and to state explicitly his recognition or non-recognition of this type of marriage.

Reference list:

Books:

1. Ahmed Farag Hussein, "Family Laws in Islam," New University Publishing House, Egypt, 2014.
2. Amani Ali Mutwally, "Legal, Sharia, and Scientific Guidelines for Modern Types of Marriage and Divorce," Modern Book House, Cairo, Egypt, 1430 AH - 2010 AD.
3. Ihab Hassan Mustafa, Ahmed Fathi, "Marriage and Divorce through Modern Means of Communication," 2012.
4. Badran Abu Al-Aynayn Badran, "Marriage and Divorce in Islam," Youth Foundation of Alexandria University, Egypt, no publication year.
5. Abdel-Raouf Al-Minawi, "Al-Dardir's Commentary on Al-Sahawi's Al-Sharh Al-Saghir," Vol. 1, Dar Ihya Al-Sunna, Cairo, Egypt, no publication year.
6. Alaa Al-Din Al-Kasani, "Badai' Al-Sanai' fi Tartib Al-Shara'i," Vol. 2, Dar Al-Kitab Al-Arabi, Beirut, Lebanon, 1982.
7. Muhammad Kamal Al-Din Imam and Jaber Abdul Hadi Salem Al-Shafi'i, "Personal Status Issues Related to Marriage, Separation, and Children's Rights in Jurisprudence, Law, and Judiciary," Aleppo Publications, 2003.
8. Wahba Al-Zuhayli, "Rulings on Contracts via Modern Means of Communication," 2003.

Articles and Comments:

1. Raufat Osman on the Analysis of Internet Marriage, Al-Mujtama' Magazine, April 22, 2004, Issue 1986.
2. Farida Sadek Zoru, "The Impact of Modern Technology on Jurisprudential Considerations: Divorce by Phone as a Model," an article published on the website: www.yeheart.net.

Online Divorce and the Extent of Legislative Recognition under Family Law: An Analytical Study

3. Abdul Sattar Abu Ghuda, Coordination and Commenting on the Decisions and Recommendations of the Islamic Fiqh Academy, 1st Session, 2nd Edition, Dar Al-Qalam, 1388 AH - 1988 AD.
4. Abdul Rahim Salehi, "Internet Marriage Contract," a comparative study between Islamic jurisprudence and Algerian law, Dafater Al-Siyasa wa Al-Qanun Magazine, Faculty of Law and Political Science, University of Guelma, Algeria, June 2012, Issue 07.
5. Ammar Muhammad Kamal, "Divorce through Modern Means of Communication," an article published on the website: www.iqmag.net.
6. Zahia Aissaoui, "Innovative Provisions for Resolving Marital Relationships, Electronic Divorce," a paper presented at the International Forum on Fixed and Variable Family Rules, 2014.