

Muslim Women's Rights in Divorce in Islamic Jurisprudence and Iranian Law: An Anallaysis

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ABSTRACT : Islam has emphasized on maintaining family. Divorce is the worst solvent but if life is hard for couples because of their conflicts, Islam advices divorce and sometimes it is obligatory for a family is codify deliberate and detailed rules. They also defined the duties and rights of each of the parties during the divorce and then also considered the duties and rights for the parties. These obligations or rights can be divided into two categories: financial and non-financial. Financial matters such as: living cost during pregnancy. In irrevocable divorce, will be decide about dowry and housekeeping wage during marriage time and succession between couples. Paying Alimony by a man during revocable divorce is obligatory if the woman is compliance her duties. Men are paying alimony to pregnant women in the event of irrevocable divorce. In case of divorce before the proximity women would be owner of half the dowry.

Some non-financial matters are the right to divorce, maintenance of iddah by women, returning right of the man during a iddah, right of keeping a children, First the man has right to divorce although in some cases is predicted by jurisprudence and law, applying it on the part of women is possible. Since that Iranian law is based on Islamic law, in most cases there is a match between the jurisprudents and relevant legislation.

Key words: divorce, Iran, jurisprudence, women, law

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I. INTRODUCTION

Although the durability and stability of the family is very important in Islam and Islam has introduced obscene divorce between the couple and disintegration of family hearth But sometimes there is no choice because it may be family and its members have suffered losses With all these issues, Islam has not allowed That the rights of the parties to the marriage or separation of men and women in finance or otherwise be destroyed So, after divorce, both spouses in respect of rights does not end, And each of them has rights that have been expressed in jurisprudence and law. Since it may be a different kind of divorce has different kind of rights or obligations for couples, the present study is explaining divorce, right to divorce and women's rights in their divisions According to Iranian law texts and jurisprudence with observation and evaluation.

II. CONCEPT OF DIVORCE

Divorce literally means liberation, freeing up, leave, separation and in legal terms the separation of couples who have permanent marriage from each other, with concubines and adhere to certain legal condition. This word is used 14 times in the Qur'an (Quran & al talaq) and more related to time the running divorce and women in the "Iddah" (Alavi Ghazvini & 2001) is and directly or indirectly encourage the return to life. For example, in Surah "Al baqara" (Quran & al baqara) twelve times the word famous is repeated which indicates a respect for the rights of others and non-abuse of their rights and adopt a humanitarian and respectful approach.

In addition to the divorce provisions in surah "at talaq" divorce iddah, the issue of alimony for divorced women, infants and lactating women and rada provisions is raised And men being forbids during revocable divorce to make pressure on women to leave the house. Quran in surah "An Nisaa" (quran & nissa) recommends men withhold from divorcing their wives and compromise knows best and noted: God has put many goods the wives that you do not like. Couple in adverse conditions, the Qur'an has propose: The arbitrator of the husband's family and arbitrator from wife family If possible talk and talk to continue living together.

In Islamic Shari'a is that divorce is the husband's overhand right and he can end his marriage He does not need any reason and can divorce his wife without the wife' satisfaction. Article 1133 of the Iranian Civil Code (1928) established the same rule and provided: "A man can divorce his wife whenever he wishes to do so. The laws that were passed in the 1960s and 1970s put limitation on this endless right.

The Family Protection Laws of 1967 and 1975 set up, divorcing couples were required to appear in court and apply for a “certificate of impossibility of reconciliation”. If the court, or the arbitrators, were unsuccessful in bringing peace between the parties, or if both parties agreed to a divorce, the court could issue a “certificate of impossibility of reconciliation”.

III. KIND OF DIVORCE

There are different types of divorce in many ways, for example religious divorce is divided to religious divorce and Haram divorce and that religious divorce divided to Makruh, Mustahabb, Mubah and Fard divorce. Also, irrevocable and revocable divorce is divided in terms of recourse. The irrevocable divorce, unlike revocable divorce, the relationship between man and woman will be disconnected immediately after the divorce. Khula Mubarat is one of the issues that have been mentioned in religious texts. (Safa'i, Hussein and Imami Assadollah & 2004)

In terms of the different legal effects, irrevocable divorce, revocable, as well as Khula and mobarat are important that we are paying more explanation below:

1. **Irrevocable divorce(talaq baen):** The irrevocable divorce is that divorce in which the man does not have the right of returning (Rujoo') to his wife without a new contract and they live together as they had been husband and wife. 1. Divorce before proximity 2. Postmenopausal women 3. underage divorce 4. Khula divorce 5. Mubarat divorce 6. The third divorce, which is located after two divorce. (Taheri habibollah & 1995)
2. **Revocable divorce:** It is permissible in the revocable divorce that the man returns to his wife without the need of performing the Seeghah of a new contract. The revocation of the divorce is of two types: A) that the man states words whose meaning is that he accepts the marriage of that woman a second time. B) That the man performs an action which implies this meaning (i.e. that he accepts the return to married life). (Taheri habibollah & 1995)
3. **Khula divorce:** The woman who does not desire to continue living with her husband and fears that if their marriage continues she will fall into disobedience, it is permissible for her to give her dowry (Mahr) or another sum for which he will divorce her. This is called the Khula' divorce. (Taheri habibollah & 1995)
4. **Mubarat divorce:** When the spouses, each one of them, dislike each other and the wife offers her dowry or some other property for the man to divorce her which it is called Mubaara'ah divorce.

It is permissible for the woman to seek the return of her offering during the seclusion ('Iddah) of the Khula' or Mubaara'ah divorce. When she gets the return of her offering, it is permissible for the husband to return to her and take her as his wife another time with no need of a new contract. The property which the husband takes for the Mubaara'ah divorce, it is obligatory that it not be more than the dowry. Rather, the precaution is that it be less than that. However, there is no objection in the Khula' divorce that the amount be whatever quantity. (Taheri habibollah & 1995)

IV. MUSLIM WOMEN RIGHTS IN DIVORCE

A Muslim woman in Islam and in Iranian law has been given certain rights in divorce which are explained below:

1. Mahrieh

A. Mahrieh in the word: The word is Arabic, which in Persian is also called dowry or cabin. The other equivalents of sedagh, nehleh, farizeh...

B. Mhrieh in legal system and jurisprudence

The first financial matter to who want to divorce his wife under jurisprudence rules is mahrieh, mahrieh is divided into immediate mahr, which is payable immediately on demand of the wife (ind-al-motalebeh), or when the husband is financially able to pay (ind-al-isteta'ah), or on the termination of the marriage by death or by divorce.

In Iran practically, however, is to specify the amount of mahrieh as deferred and only payable on demand of the wife (ind-al-motalebeh) or in the case of divorce. Determining the amount of mahr is the right of the spouses and lawmakers did not set a maximum amount for the mahriyeh, on March 6, 2012, The IRI Parliament passed an article of the new Bill of Family Protection Law which sets a limit of 110 gold coins for the mahr, above which the husband, if unable to pay, will not be jailed. (iarnian parlement & 2012)

Article 1085 of Civil Code provides: So long as the marriage portion is not delivered to her, the wife can refuse to fulfill the duties which she has to her husband provided, however, that the marriage portion is payable at once. This refusal does not debar her from right of maintenance expenses.

C. Ways to claim mahrieh: A woman can apply for mahrieh through family courts or relevant authorities (Deeds and Property General Registration Office). The application for mahrieh through the court requires the submission of a petition by the wife, she can request the detention and suply of the husband's property at the

beginning of her request without asking for a mahrieh or at the same time, demand for the issuance of supply and mahrieh In case of non-ability with for payment of the costs of the trial, she will also be required to fill an application to family court at the same time. The receipt of the dowry by the execution of the registration office is the second method of the demand for mahrieh by the wife, if the marriage contract is official. (zamani dar mazari, mohammad reza & 2008)

2. Alimony (nafaqa) (Iam Khomeini & 1980)

A. Alimony in word: article 1107 of Iranian civil law refers: "Alimony is habitation, clothing, and food and furniture, which is customarily suited to the state of the woman and the servant in the event of a woman's habit of having a servant or a need because of the disease or deficiency of the members". The husband must take care of his wife and children as the head of the family. These needs cannot be enclosed within a certain framework, and inevitably, they should be subject to arbitration by custom. For example, the cost of a woman's treatment and medication is alimony and it is duty of the husband.

B. Alimony in legal system and jurisprudence: The second financial effect of the marriage is the man's and women duties and women's right to maintenance. A husband, under Islamic law, is obliged to provide his wife required maintenance (nafaqa) (Article 1106). According to Article 1107 of the Civil Code: (Iranian civil law & 1996)

"Nafaqa includes all reasonable and appropriate needs of the wife such as dwelling, clothing, food, furniture, the cost of health and remedy, and a servant if the wife is accustomed to have servants or if she needs one because of illness or defects of limbs." (Quran & albagara)

The wife can even sue her husband in court if her husband doesn't pay her nafaqa. In such cases the court shall decide on the amount of nafaqa and force the husband to pay it (Article 1111 civil law). The Iranian Penal Code prescribes on article 542 imprisonment 91 days to five months' for a husband that, refuses to pay nafaqa to her wife. A woman who has been waiting for the iddah of divorcement, the maintenance payment is compulsory upon her husband.

According to the Islamic Law (Fiqh) and Iranian family and civil law, the period of time for iddah because of death, divorce or one of the reasons of annulment are different. The iddah time for a woman who is pregnant is till she gives birth to. If the marriage ends as a consequence of the death of the husband, the time for Iddah is four months and ten days. If she is not pregnant, is the time for three periods. The waiting time for younger and older ones who do not have periods is three months. (Quran & talaq)(Quran & nissa)

C. How to claim alimony: If the court decides to determine the past alimony of the wife, first, she must demand her alimony from her husband's, secondly, the court will enter into the subject of women has being a good relation with her husband or not. If the woman is proves during the alleged period, she was submissive to her husband court will Vote in favor of her.

3. Wages for housework and Nahla

A. wages for housework and Nahla in word: they are two legal foundations for the first time on the reform of divorce law. Wages means wages, salaries and wages in the form of rent. At

Definition and legal meaning of it should be said: The wage that people usually pay for the agent. Nahla means giving a woman a dowry without a change or crave or demand. Also, they have brought it in the form of free and free gift and forgiveness.

B. wages for housework and nahla in legal system and jurisprudence: Under the law and the rights of women in divorce, wages and nahla are awarded to women under certain conditions. Three conditions is generally accepted to pay for household work,

A) - fee is payable at the time of divorce.

B). the wife will not divorce.

C). If man is requesting divorce, and not caused by duties violation of wife or immorality and behavior of wife.

If women do the housework and men wanting to divorce his wife he has to awarded wages to the wife. Nahla is a gift from husband it is worthy will be paid at the time of divorce.

If for any reason is not possible to pay the wages for homework's (like the woman plans to have free activity) it is reaches the turn of the nahla so you cannot request the payment of nahla and wages homework's together. (Iama Khomeini & 1980)

C. Wife's eligibility conditions for getting a wages and nahla: 1. According to The years of common life and the kind of work done by the wife in her husband's house, court is calculating a payment as "forgiveness" to the wife. 2. When wife is entitled to a wages or nahla the couple does not have a marriage contract or other contract for financial affairs. 3. The type of work done by a wife in a couple's home will be criteria for the determination of nahla.

D. Criteria for determining the nahla: 1. the number of years the couples lived with each other. 2. Whether wife has a job or she spent her fulltime on a shared life. 3. The place of living was in the city or in the village. 4.

Number of common children and / or children belonging to the couple or belong to another woman before her.
5. What is the level of education of children because the mother is so responsible than father for studying?

V. THE RIGHTS OF WOMEN FOR DIVORCE IN SPECIAL CASES (OSR-VA-HARAJ)

Article 1130 of civil code

During the following years, some articles of the Civil and family Code were amended especially in respect to marriage and divorce. In such cases, if the husband did not give his consent for divorce his wife, the court would divorce his wife on his behalf. In 1982; Article 1130 of Civil Code was amended to grant a judicial divorce requested by a woman in cases of *osr-va-haraj* (intolerable difficulty and hardship) that means the continuation of life impossible for the wife. In 2002, a note was added to the same article. Article 1130 (amended on 29/12/1982) -Note (added on 20/7/2002) the *osr-va-haraj* (intolerable difficulty and hardship) mentioned in this article refers to the conditions that make the continuation of life intolerable and difficult for the wife; the following circumstances, if proved in the relevant court, shall be considered as a case of *osr-va-haraj*: (Katozian, naser & 2004)

- 1- The husband's leaving of marital life for, at least, six consecutive months, or, nine alternative months in a one year period, without any acceptable reason.
- 2- The husband's addiction to any kind of drugs or alcohol that, damages the marital life, and his refusal, or impossibility of compelling him, to quit the addiction in a period prescribed by the doctor. If the husband does not fulfill his promise [to quit], or, again begins his abuse, the divorce shall be granted by the request of the wife.
- 3- Final conviction of the husband to five years, or more, imprisonment.
- 4- Wife maims or any kind of mistreatment of the wife that is intolerable in the wife's condition.
- 5- Husband's affliction to incurable mental illnesses or contagious disease or any kind of incurable diseases that disrupts the marital life. The circumstances mentioned in this article are not exhaustive and the court may grant the divorce in other cases that *osr-va-haraj* is proved in the court.

The conditions and limitations of *osr-va-haraj*

A. Article 1130 of civil code: In Article 1130 of the Civil Code and jurisprudence we can consider the following conditions for applying it. **A.** reasons of *osr-va-haraj* should be available at the time of divorce **B.** The criterion to understand and diagnosis of *osr-va-haraj* is a personal criterion and it is determined by the material, psychological, and personality status of the woman. **C.** The marriage relationship should be permanent. **D.** *osr-va-haraj* should be determined by the court.

B. Article 1133 of civil code: On November 19, 1992, the law of "Correction of Divorce Rules" was adopted by the Expediency Council according it was provided that divorce should only be granted if all the wife's rights including *nafaqa*, *mahriyeh*, etc. were either paid or the wife is consent. The law also extended the divorced wife's financial rights to the right to sue for payment for household services during the marriage.

Article 1133 of the Civil Code was another article it was amended in 2002. While the old article provided that a man could divorce his wife whenever he wishes without any wife consent, the amended article provides: "A man can divorce his wife under the conditions of the current law and by applying to the court.

Note- A woman, too, and according to articles 1119, 1129 and 1130 of the current law can request a divorce from the court."

According conditions of marriage contract and article 8 of family law women can requests her full *mehrieh* and still have the right to divorce in case:

1. Husband is abusive.
2. Husband has committed polygamy without wife's consent.
3. Husband has not paid *nafaqa* for six months.
4. Husband has serious illness.
5. Husband is mentally ill.
6. Husband has not had sex with wife for six months.
7. Husband has a job for which the wife feels humiliated.
8. Husband is addicted.
9. Husband has not fathered a child during the first 5 years of marriage.
10. Husband is a criminal.
11. Husband is punished (by the legal system) for something about which wife feels humiliated.
12. Husband has been in prison for over 5 years.

In other words, if a man wants to divorce and his wife does not agree, he has to buy his way to freedom with a price that almost no man can pay. (Mohageg damad & 2009)

VI. COMMON LAW OF SPOUSE AFTER DIVORCE

The following are some common rights and benefits to both male and female in Islamic and Iranian law:

1. Couples inheritance at the time of divorce

A. couple inheritance at the time of revocable divorce: Inheritance rights related to marriage, not divorce, but if the woman is given revocable divorce by man and in time of iddeh one spouse dies Inherit from each other.

Article 943 - If the husband has divorced his wife in such a way that the divorce is revocable, either one of them who dies before the expiry of the "iddah" period will inherit from the other; but if the death of one of them takes place after the expiry of "iddah" period, or if the divorce was irrevocable, they will not inherit from each other. (Iranian law & 1974)

Ayatollah Makarem Shirazi explained: if a man divorced his wife revocable divorce and among iddeh die his wife will Inherit from her husband, if the woman dies her husband inherits from her. (makarem shirazi naser & 1926)

Couple inherits from each other during the revocable divorce because they are husband and wife

And the marital relationship has not been completely interrupted the contract is not completely discontinued and remains in force and like divorce has not happened For this reason, a man is obliged to accept his wife at home and pay his alimony in the days of divorce.

B, divorce during ill

If a man divorces his woman in a state of illness And died within one year of the date of the divorce due to the same illness as the man died The woman will inherit her husband if she does not marry again. Article 944 - If the husband divorces his wife when he is ill, and dies of that same disease within a year from the divorce, the wife takes inheritance from him, even if the divorce were irrevocable; provided that the wife has not taken another husband.

This inheritance is specific for woman and if a woman dies before her husband's within one year from time of divorce her husband will not inherit her

2. Child alimony

The father is responsible for financial supporting his child mentioned in article 1107 of civil code. Up to 18 years is for boys and girls are up to time of marriage. However, after the father's death, or in case of his inability to do his duties, the courts could respectively instate of paternal grandfather as the child's guardian if he is not possible to doing his duties mother and paternal grandmother has responsibility to paying alimony. (Jafari langrodi & 2003)

3. Child custody and guardianship

The family law regime in Iran distinguishes the concepts of guardianship and custody. Guardianship noted to the power to make decisions on property and financial matters for example, obtaining passport, permission for marriage of virgin girls, ownership and disposal of the children property, travelling out of the country or undergoing surgery. Custody refers to the exercise of parental responsibility for day-to-day decisions relating to a child's care, looking, keeping and upbringing. Custody and guardianship are mutually exclusive concepts under Iranian law. (Mohammad mosavi bojnordi & 1996)

Accordingly to article 1180 of Iran's Civil Code, guardianship belongs primarily to the father or paternal grandfather of a minor child. Article 1169 of the Civil Code clarifies that mothers are the preferred legal custodian for children seven years of age or younger. After age seven, custody transfers automatically to the father. Legal reforms issued in 2003, however, allow parents to dispute to requiring custody on the basis of the best interest of the child. When a child has reached the age of legal maturity the court is supposed to ask for his or her opinion as part of determining what custody arrangement, and with which parent, is in the child's best interest. In this context, a girl can decide at a younger age, 9 lunar years and boys 15 lunar years of age. The father or the paternal grandfather retains guardianship even if the mother has custody, guardianship is not based on the best interests of the child. In most cases, in the absence of a father or paternal grandfather a mother will be granted guardianship. (Ebadi shirin && 2006)

Article 1170 of Civil Code provides: During the priority age or after that custody will give over upon the father if the mother remarries or become insane. In other words, if a mother wants to keep the custody of her child after divorce, she must not marry to another man. Otherwise, she will lose custody. There is no restriction for the father. When a father obtains the custody of his child, even if he marries, he will keep the custody and the child's mother cannot claim the custody back on this ground. (Emami seid Hassan & 1970)

The father can regain custody is by proving that the mother is unfit to care for the child. The mother can also sue the father on the basis that he is unfit and obtain custody. Article 1173, provides.

VII. CONCLUSION

Couples' rights and duties are one of the things that the religion of Islam has set for the consolidation of the family and its growth. Observing these rights and carrying out the related responsibilities leads to the closeness of the couples and prevents the family from being in the anarchy.

The proof of the existence of husband property is duty of wife and this is difficult for wife due to problems of the registration system, the lack of government supervision and lack of a centralized banking system in addition. The unwillingness of men to consult with his wife in transactions and to declare money to his wife adds to this problem.

Consideration of the wife's request regarding the condition of divorce. Due to the steps it takes a long time, such as the introducing husband's property by a woman, a putative defense of the transfer of property to others, with negative assets, the referral of order to the expert, the right of protest to the expert for the parties, and ... These matters often leave the main conflict of "divorce" from its main course.

Husband encounters heavy financial responsibility in divorce proceedings; attempts to create harsh conditions for his wife or to fill a one-way petition by wife. Since divorce is heavy financial responsibility at the request of a husband, almost half of the divorce lawsuits by men are closed before the sentencing ends, by "canceling the lawsuit" or "rejecting a lawsuit".

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