

Exclusive Social Rights of Wife in Islam on the Basis of Civil Law of Iran

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Abstract: The sacred religion of Islam has particularly attended the wife and the related rights issue and has always tries to codify rules apposite for the personality of women in different Ayahs and quotations protect their rights. In a general classification of the exclusive-social rights of woman which is obtained under the social life it is divided into two parts of general and special. General right refers to the rights that men and women mutually benefit from (although with partial differences) such as ownership right, occupation right but special rights are rights that exclusively belong to the women community and in fact they are points assigned by the sacred religion of Islam to women and these rights can also be divided into material and spiritual rights. Material rights such as alimony, dowry and spiritual rights such as protecting the munificence of woman, apposite behavior towards woman etc. In the present study which is a descriptive-analytic study conducted via library method the authors intend to analyze the exclusive-social rights of women in two parts of material and spiritual. Among the main questions of the present study is whether Islam has considered special social rights and advantages for women as an influential part of the Islamic society and whether the civil law of Iran has attended these rights in codifying rules in this respect the hypothesis formulated in the present study is that the sacred religion of Islam and accordingly the civil law of Iran in addition to the mutual rights of men and women a number of exclusive rights such as dowry and alimony have been considered in accord with the prestige and personality of women.

Key words: Social rights, exclusive rights, woman, Islam, civil law of Iran

INTRODUCTION

Instrumental woman and ignoring the certain rights of women over the history has been an ominous phenomenon on which has always attracted the attention of the world intelligentsia. The sacred religion of Islam with divine and rules and commands has tried to eliminate this critical dilemma and has always tried to fulfill the rights of women on the basis of justices and equality and has considered human personality the same as men in this respect. Therefore, in divine teachings of this sacred religion there are programs to fulfill the rights of this part of the society. The civil law of Iran which is derived from the religious jurisprudence resources has attended this significant issue at different stages that would be discussed in the following part in two parts of the material and spiritual rights different types of social and exclusive women rights will be discussed.

MATERIALS AND METHODS

Material rights of the wife: What has been considered as the material rights of the wife in Islamic community is as follows.

Dowry: Dowry is the money that the husband gives the wife because of the marriage contract. (Ibne Manzur, Lisanol Arab) Dowry is the property that the wife becomes its owner because of marriage and the husband becomes responsible to pay that to the wife (sAFAIE, 1985).

Imam Khomeini in Tahrirul Vasile in terms of dowry states that dowry is the loan or money that technically women becomes its owner because of marriage and the woman becomes responsible to give it to the wife (Imam Khomeini Tahrirul Vasile, Nekah Book contract season subject 11).

The position of dowry in Islam: In Islam dowry stands on several bases:

- Dowry is on the basis of the personality and independence of woman and not on the basis of her value
- The basis of dowry is the dignity and reverence towards woman because the gift and offering is given to someone who is loved and considered important and significant

- Dowry shows that woman is considered economically independent and worthy of occupying and ownership of the property
- Since, love and emotion has a significant role in the relationship between couples the man expresses this love and emotion by offering gift and emphasized on that (Pak, 1997)

Besides the aforementioned items in case of the breaking of the marriage contract and divorce does not get economic insolvency and inability. Sheik Tusi explicates the rational behind offering dowry by the husband that the great God has made dowry compulsory for man but has not made woman responsible to pay anything which means that dowry is a gift from the great God for women.

Dowry in Quran: The most important ayah that can be referred to in Quran is Ayah 4 of Surah Nisa. The great God states that: give the dowry of women with utmost satisfaction. In the aforementioned ayah some issues are mentioned: First, it is mentioned by the term Sodge and not dowry which means the honesty and it is referred to with this term to represent the honesty of the love of man. Some of the interpreters like Sahebe Kashf have asserted this issue; similarly Ragebe Isfahani has ascribed the use of this term as a reference to the honesty of the faith. The other point is that the dowry belongs to the woman herself and not to her parents and dowry is not a wage for her feeding, milking and growing up. Third by the use of term Nahle clearly asserts that dowry has no meaning but gift, offering or present (Motahhari, 1997).

Allame Tabatabai states in the interpretation of this ayah that Sadoge and Sadage and Sedag all refer to dowry which is given to women and the word Nahle refers to the free gift given and not compared with the price. And the plural pronoun of sadaghat is to refer to the fact that the compulsion of offering dowry to women is not an issue solely arranged by Islam and in other words the addition of this pronoun and the offering of dowry among people and their marriage traditions (Ahmadi, 2012).

In addition to sedagh in some of the ayah of the Quran (Nisa, 24,25, Maede 5) the term Ojur the plural of ajr which means wage has been used which apparently shows that marriage is an exchange. In a more clear statement and by a quick observation of these ayahs it can be inferred that man makes use of woman for sexual benefits and for this service any servant deserves wage and payment but with more precise attention we see that this assumption is wrong and the aforementioned ayahs do not refer to this assumption that the ayahs mean that they are in exchange for the sexual benefit but the dowry

gift has a deep root and origin that happens because of the positive response of woman to the expression of love by man (Sadeghi, 1987).

Dowry in quotations: In valuable statements of infallibles the offering of dowry to wife is considered as the responsibility of the husband and Imam Sadigh states that "anyone who determines a dowry to offer his wife and does not intend to pay it is the same as a robber (Fahimi, 2008) also determining the amount of dowry is among the certain facts of marriage in Islam so that the prophet Muhammad peace be upon him (Fahimi, 2008) and Imam Ali (Safaie, 1985) by this assumption that determining dowry is a compulsion refer to the appositeness of low dowries.

The wife's ownership of dowry: Civil law of Iran in articles 1078-1101 refer to the rules related to dowry which is based on Imamiye religious jurisprudence. As mentioned in article 1082 of the civil law: As soon as marriage contract is signed wife is the owner of the dowry and can make any type of occupation she wishes.

Therefore, following marriage contract all of the dowry is owned by the wife and gets established by one of the following factors: closeness, innate apostasy of the husband, death of husband, death of wife. Imam Khomeini states the requirements of establishing dowry as it follows: if one of the couples die before the intercourse as the majority belief the same as the divorce time before intercourse the wife would deserve half of the dowry and that as soon as marriage contract is signed the wife is the owner of the dowry but the establishment of this ownership depends on intercourse.

Ayatollah Araki states in this respect that: by the death of the husband before the intercourse all of the dowry belongs to the wife but by the death of wife before the intercourse it is not clear that all of the dowry belongs to wife but half of the dowry belong to her.

Types of dowry: Dowry in permanent marriage has the following types.

Alsonne dowry: It is a recommended dowry equal to five hundred Derham but in civil law there is no reference to this type of dowry.

Almosamma (named) dowry: Whenever the dowry is determined in marriage contract it is referred to as Almosamma(named) dowry and its amount may be more or less than the Alsonne dowry. Therefore, the wife can do dealings according to the general requirements of the contracts as the dealing article in addition to the marriage

contract brings it as part of the dowry. Determining the amount of dowry according to the Article 1080 of the civil law depends on the satisfaction of the sides or the choice of the third person has been assigned. In case of the nullification of the dowry on the basis of the Article 1100 of the civil law in case the Almosamma (named) dowry is unknown or does not exist in material or to be the property of others in case of the first and second the wife would deserve the Almasal dowry and in the third case would deserve the same or the price of it.

Almasal dowry: This type of dowry is a type of dowry whose rate and amount is not determined during the marriage contract but on the basis of the customs and traditions and the condition of woman in terms of age, beauty, education, family and social position etc. In civil law the cases in which woman deserves Almasal dowry are as follows:

- Article 1087 of civil law; when dowry is not determined in marriage contract and before the agreement of the couples on a definite dowry has happened between the couples
- And also the continuation of the article 1087 of the civil law; whenever the lack of dowry has been conditioned in the contract and has happened before the satisfaction of the couples on the dowry
- Article 1100 of the civil law; in case Almasal dowry is unknown or non-material or to be the property of others in the first and second case the wife would deserve Almasal dowry and in case of the third one she would deserve the same or the price of it unless the owner of the property allow
- Article 1099 of the civil law; in case of the lack of knowledge if the woman of the corruption of the marriage and the occurrence of intercourse the woman would deserve Almasal dowry

In terms of the price of the Almasal dowry the daily price needs to be considered or the time of intercourse the major belief of the Imamiye religious scholars is for the time of the first intercourse because they believe that on the same day the rate of the dowry is put upon the responsible (Rasuli, 2013).

Almot'e dowry: Almot'e in terminology refers to benefiting and enjoying and the phrase Almot'e dowry is extracted from the Ayah 236 of the Bagare Sureh if you divorce women before intercourse or determining the rate of dowry there is no blame on you but provide them with some property and those who can afford to the rate of their ability and those who are insolvent a worthy gift to their ability.

Almot'e dowry is the property offered by the husband to the wife in case of divorce and before having sexual intercourse or determining dowry depending on the economic condition to the wife and on the basis of the Article 1094 of the civil law the economic condition of the husband is considered to determine the rate of the Almot'e dowry and in case of the occurrence of dispute the prosecutor determines its rate on the basis of the custom (Rasuli, 2013).

Alimony: One of the monetary rights that Islam has considered for the wife is the right of alimony that husband is responsible for its payment.

Alimony has two meanings in Persian language: What ever that is forgiven. What ever that is spent for the wife and children (Jafari Langrudi, Law terminology) Alimony in Arabic language refers to give-away and forgiveness or what man spends for his wife (Koleini and Ibne, 1974)

In addition to that in the civil law in the article 1107 alimony has been defined as follows: alimony refers to all needs and requirements of wife such as housing, clothing, food, furniture and the hygienic and treatment costs and servant if accustomed or needed because of deficiency and illness. but the civil law has not provided a definite definition of alimony but has only referred to its instances. But the following definition seems to be comprehensive in this respect. Alimony in legal terms refer to providing the expenses of self and those under one's protection and the person is legally responsible to provide them (Nuri, 1999)

Religious principles of alimony: Imamiye scholars have referred to Quran, tradition and consensus and the public scholars have made use of mind and compariso (Fahimi, 2008).

Alimony in Ayahs: Ayah 233 of Baghare Sureh in terms of the necessity of paying alimony states that: and father is responsible to provide the food and clothing of mother at normal rate and no one is responsible beyond his power. In another instance ayah 34 of Nisa Sureh: men are the protectors and guards of women; for the priorities that God has allotted to some compared to others and for the alimonies that they make of their properties and the righteous women are those who are humble and keep the secrets of their husbands in front of the responsibilities that God has considered for them.

Alimony in quotations: The prophet in the lecture of Hajjol Veda has stated in terms of the right of woman on her husband as follows: You are responsible to appositely

and kindly provide the food and clothes of your wives (Soltani, 2010). Imam Sadegh Quotes from the prophet that He stated that: One who violates the rights of family and children is damned (Soltani, 2010).

Imam Sadegh states that a woman went to the prophet and asked about the right of wife from her husband and then heard the answer and asked about the right of husband from his wife and the prophet answered: the right of wife to her husband is to save her from nudity and feed her and forgive her when she makes a mistake (Diyani, 2008).

Consensus: The principle of necessity of alimony is a matter of consensus that all of the scholars of Imamiye confirm it (Diyani, 2008) and in addition to Imamiye the public scholars have also confirmed the necessity of alimony (Araki, 1998).

Types of alimony: In Islam there are three types of alimony:

First type: The alimony that the owner should spend for what is owned such as the cost of looking after animals. The criterion of this type of alimony is ownership and being owned.

Second type: It is a type of alimony that human should spec for the immature children and poor parents. The criterion of this type of alimony is the rights that children have upon their creators and the rights of parents for the troubles that they have endured in bringing up children. The condition of this type of alimony is the inability of the mother and father.

Third type: It is the alimony that man pays to his wife. The criterion of this type of alimony is neither ownership nor natural right as mentioned in the second type and not the poverty of wife but in case wife has a lot of money and man has a little earning again man is responsible for earning money and expenses of the family. The other difference between this type of alimony and the first and second type is that in these cases when a person does not fulfill his duties he is a sinner but the violation of this responsibility does not change into a demandable right but in the third type woman has the right to make a legal case and ask for the unpaid alimony (Dad, 1997).

Legal identity of alimony: Alimony is among the important issues in family law because a large sum of the cases in the courts is about alimony and might have lead to the divorce judgment in some cases. For the same reason the civil law in family part has referred to a number

of these cases that would be mentioned as follows: Article 1106 of the civil law: In permanent marriage contract the alimony of the wife is upon the husband Article 1107 of the civil law: Alimony refers to all customary and apposite needs in accord with wife's condition and Article 1111 of the civil law: wife can refer to the court if the husband refrains from paying the alimony. In this case the court determines the rate of the alimony and makes the husband responsible to pay it Article 1206 of the civil law: The wife can ask for alimony right of the past at any time and in case of the bankruptcy of the husband she is the first in line of the creditors.

In terms of the identity of the alimony it can be stated that what husband gives the wife as alimony can be divided into two parts: In terms of consumptive goods such as foodstuff this alimony is ascribed to wife and she has every right to occupy it but in terms of non-consumptive items their ownership is not transferred to her and she can only make use of them (Safaie, 1985). But in cases like shoe and bag the customary norms should be considered and the today custom consider them as the owned items. However wife has no right to make abnormal use of the allotted alimony (Safaie, 1985).

RESULTS AND DISCUSSION

The obligation conditions of alimony: Since the payment of alimony is one of the conditional obligations at this part the conditions of its obligation would be discussed: The late Sahebe Javaher states in this respect that: Alimony is obligatory because of one of the following items: marriage, relativeness, ownership but in marriage case it gets obligatory under two conditions: one is permanent marriage and the other is docility (Jafar, 1987).

Imam Khomeini in addition to mentioning the requirements of the obligation of alimony calls Noshuz as the obstacle against the obligation of alimony of the wife and states that the condition of the obligation of alimony is the permanence of the marriage then in non-continual marriage wife has no right of alimony and it is conditional to the adherence of the wife from the husband in cases that are required therefore this type of wife has no right of alimony.

According to the civil law of Iran, the obligation of paying alimony by the husband to the wife is two items as follows: First, according to articles 1106 and 1113 the marriage contract between them needs to be permanent and in temporary marriage the payment of alimony is not obligatory to the husband unless a condition has been arranged about the payment of alimony in the temporary marriage contract.

Second: docility of wife

Docility definition: In Islamic law docility has been used in two instances.

Special definition: This definition includes doing sexual and marriage responsibilities, the general definition: adherence of wife in current issues of marital life from the husband according to the custom and in case a woman refrains from adherence then she is *Nasheze* and then no alimony is upon her husband in this case but if the wife has legal or religious reason in disobeying her husband it seems that she is not *Nasheze* and deserves to receive the alimony.

Alimony cancelation cases: In the following cases wife is considered as *Nasheze* and would not deserve receiving alimony:

- Not adhering the husband
- Immature wife: Since, the condition of the obligation of alimony is the docility and immature wife is unable to do it then alimony is not obligatory upon the husband.
- Apostasy of the wife, being Muslim is not the condition of deserving alimony but returning from Islam cancels alimony and if repented then again she would deserve to receive alimony
- Travel of the wife without the permission of the husband
- In a case where the husband is immature and the wife is mature: In these cases the husband does not have the ability of providence therefore the right of alimony is not obligatory. But in this case it has been criticized that here the condition of consistency of alimony is the providence by the husband (Fahimi, 2008)

Rental value: Rental value refers to the wage paid for doing an action. Given the fact that the action or carried out work is a type of property and has financial value and can be exchanged with money and since man benefits from wife's working power during marriage days then he is in fact making use of a property and as a result wife deserves to receive a rental value. In many dealings such as rent, *Mozareeh*, contract of bailment, reward, etc., the payment of rental value is normal for some one who has been responsible for doing an action.

Religious basis of rental value: The principle of reverence for the act of Muslim: Which means that the property of human is revered and every one is the owner of his/her property and the property of every one is secure from any

occupation or violation. Therefore, in case wife does an action in the house of the husband beyond her responsibilities then she deserves to be rewarded.

Legal analysis of the rental value: Part a of the note 6 of the law of revising rules about divorce passed in 1986 states that in case wife does activity beyond her responsibilities at home the court should estimate the Rental value of the done job and order for the payment of it to the wife.

It's worth mentioning that the belonging of Rental value of the wife's activities does not refer to the time of divorce because on the basis of the article 336 of the civil law when someone does something under the order of someone else for what there is customarily wage then the doer would deserve Rental value unless it becomes evident that doer meant giving gratis.

Conditions of paying wife's rental value: In the note 6 of the law of revising divorce rules a number of conditions have been mentioned to pay the rental value to the wife as follows:

- Divorce is not asked by the wife
- There has been no financial condition in permanent and outside marriage contract
- The performed activities are not among the responsibilities of the wife
- Divorce is not because of the misbehavior or deficiency of the wife in fulfilling her responsibilities

Nehle: Definition: It is a gift for which there is no price or exchange. Farahiri writes in defining *Nehle* it is to give something to someone and not ask for return.

Nehle in Quran: Quran in this respect states that: pay the dowry of women as a gift to them (Nisa 4) some scholars such as Shahid Sani consider *Nehle* in this instance as the dowry regardless of the meaning of *Nehle* in this case religious scholars have different interpretations of it and their commonality is that *Nehle* is something that has no return. On the basis of the aforementioned issues it can be argued that *Nehle* has never been used as the rental value in any case because it is a gift with no return but rental value is the return of the performed activity.

The payment of *Nehle* or gift to wife at the time of divorce has been mentioned in note b of the part 6 of the law of revising the rules about divorce which has been derived from the Quran ayahs but it has been referred to as the article.

The great God in Ayah 241 of the Sureh Baghare states that: For divorced women there is a worthy benefit the same as pious men. Allame Tabatabaie considers the payment of article in the aforementioned ayah including all divorced women and states that: giving gift to all divorced women is recommended (Rasuli, 2013).

Conditions of deserving Nehle and its determination: Conditions of deserving Nehle and its determination are as follows.

Separation of the wife by divorce: The first condition in asking for Nehle is that the separation of the husband and wife has happened by divorce and this is fully in accord with the great ayah that refers to the number of divorces. Therefore, it can not be attributed to cases such as marriage cancelation, Lean and apostasy etc.

Divorce is not asked by wife: If the divorce is from the wife such as khal or mobarat and the divorce is caused by the deficiency of wife from her marital duties wife would not deserve Nehle.

Lack of financial condition between the couple: Given the rational behind the Nehle creation it is to protect wife from economic troubles and difficulties that happen after the divorce if they are predicted and preplanned in the marital contract in advance then the necessity of Nehle is eliminated.

Lack of possibility to pay rental value to the wife: When there is no chance to order for the payment of rental value which is because of the lack of proving the claim of wife in doing activities beyond her duties or inability to provide documents that she has done activities under the order of husband or by the confirmation of the wife that all she has done was for gratis and for the sake of God then Nehle can be allotted to the wife.

Because in terms of order rental value is prior to Nehle (Ahmadi, Nahle and rental value of the wife activities).

Part two: spiritual rights of wife: As mentioned earlier for the wife in addition to the financial rights some spiritual rights or non-financial rights have been considered that some of them would be mentioned as follows.

Kind and good companionship: One of the responsibilities of husband towards his family and his wife is good companionship. The great God states in ayah 19 of surah Nisa behave kindly towards them. Also the prophet of Islam (peace be upon him) states that: one who behaves

kindly towards his family would live a long life. The civil law of Iran in article 1103 states that husband and wife are responsible to behave kindly towards each other and given the sensitive and tender nature of women men are more responsible to follow this responsibility.

Helping and cooperating at doing household tasks: Article 1104 of the civil law considers cooperation of husband and wife in doing household tasks as important responsibilities of them and the significant issue is that this issue is more considerable for men because in some cases men because of doing the job outside the house refrain from doing their tasks.

Generally man in relationship with his wife should behave in a way that provide all mental needs and facilitate the development and emergence of all covert talents of her. The great God in ayah 34 of the surah Nisa states that men are the agents and planners of the life of women because God has prioritized them compared to women in tolerating the mental and physical troubles and difficulties and for that they pay from their properties the cost of women's life costs as an obligatory right. Therefore, man should provide the security, happiness and health and strength and chastity by his power, and prudence so that the love and kindness of woman blossom and in her freshness all activities of man have godly dimension. Imam Ali (peace be upon him) in the way of behavior towards women advises his children as follows: Try to behave so respectfully and provide all the needs of her and obtain her trust so that she does not think of no man but you and does not want no man but you (Fatemi kia, Seyyed Mostafa, the responsibilities of man in Quran).

CONCLUSION

Since, human is a social creature and can provide the material and spiritual needs by living in a society the civil law of Iran which is based on the divine law of Islam the fulfillment of these rights and needs have been attended and exclusive rights have been considered for the wife which shows the special attention to the woman community.

In terms of material rights of women it can be stated that in response to particular responsibilities of women such as docility of husband some rights have been assumed for them such as dowry, alimony and Nehle. Dowry is a definite and certain right of wife and can not be avoided except by the agreement of the wife. The payment of alimony commensurate with the position and dignity of the wife is one of the responsibilities of the husband but it is one of the conditional obligations that

depends on the adherence of the docility of the wife and its payment does not depend on the financial ability of the husband and can be determined by the needs of the wife.

The other significant issue is that the sacred religion of Islam in addition to considering the material rights of wife that are the religious obligations it has also obliged husband to provide all spiritual and mental needs of wife and finally it should be mentioned that the codification of rules in Islam are in a way that in addition to demanding deference of the wife towards her husband it also ensures the freedom of wife and does not allow violating the financial and spiritual rights of the wife.

REFERENCES

- Ahmadi, A.N., 2012. *Ojratol Masal of the Wife* Tehran Andishe. ASR Publication, Tehran, Iran,.
- Araki, M.A., 1998. *Ketabol Nekah*. Etemad Publication, Tehran, Iran,.
- Dad, M.M., 1997. *Qom Seductive Jurisprudence*. Ta-Ha Publisher, Qom, Iran,.
- Diyani, A., 2008. *Family Law*. Mizan Publication, Tehran, Iran,.
- Fahimi, F., 2008. *Woman and Financial Rights*. Khorsandi Publications, Tehran, Iran,.
- Jafar, M.J., 1987. *Law Terminology*. Danesh Publication, Dinajpur, Bangladesh,.
- Koleini, M. and Y. Ibne, 1974. *Forug Al-Kafi*. Islamic Dar Ul Kitab Publisher, Tehran, Iran,.
- Motahhari, M., 1997. *Woman Rights in Islam*. Sadra Publisher, Tehran, Iran,.
- Nuri, R., 1999. *Family Marriage*. 1st Edn., Penerbitan Pelangi Publication, Malaysia, Asia,.
- Pak, N.R., 1997. *Marriage the Human Making School*. Akhlag Publication, Qom, Iran,.
- Rasuli, M., 2013. *Family Law Tehran*. Fekr Asar Publication, Tehran, Iran,.
- Sadeghi, M., 1987. *Alforgan More Tafsire Algoran Islamic Culture*. Islamic Culture Publication, Qom, Iran,.
- Safaie, H., 1985. *Family Law Tehran*. University of Tehran Press, Tehran, Iran,.
- Soltani, S., 2010. *Alimony and The Legality of it*. Khorsanid Publication, Tehran, Iran,.