



Financial condition of the marriage in law and Islamic jurisprudence

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Abstract. These days effect of divorce as the most common reason of Dissolution of marriage on financial condition is very important and legislative policy communities cannot be unconcerned. Iranian legislator in order to apply Article 1133 of the Civil Code based on absolute right of men and financial support of the rights of the wife without fault should be concerned as well as it became mandatory that the relevant provisions of the Divorce Reform Act passed in 1992 and then new family law which includes: believes, interim during some maintenance and some other aspects are not mandatory and when required which under the stipulation, the couple agreed like bisection asset condition of parity. The main focus of this study is descriptive – analytical and investigates financial terms of the marriage in the legal system of the Islamic faith in order to help Judges of courts and judicial procedures for performing twelfth principle of constitution law and Iranian Shiite Personal Status Act of 1923, non-compliance with the provisions of a single article.

Keywords: Iran Law, Islamic jurisprudence, Divorce, Bisection condition of the property

1. INTRODUCTION

The question of divorce is one of the major issues with our various communities, including the Islamic community and it is cited as "the disease or plague of the century" (Motahary, 1993). In most legal systems of the world, supporting women in the family, in two different degrees of protection and is considered; the first, When the family and for life and survival and after Breakup (Shokri, 2009). The importance of this institution in our society that caused the legislature under the tenth and twenty-first constitution obliged to respect the rights of women as part of the institution of family is in compliance with Sharia. On the one hand, since the footsteps of Islamic law, civil law, or divorce without any stipulation and for abuse of the right of men and women who are actually extortion and injustice and Policy makers are seeking to way for abuse of the right of men and women who are actually extortion and injustice as well as action to address the legal principles of the constitution of the affair, need to know the judges and the courts of Islamic jurisprudence; therefore, justice are facing with struggles and they have to refer the matter to the scientific community legal centers and obtaining official fatwa (Mir Dadashi et al, 2010). In addition to the above explanation for the fact that the legal systems of other institutions. The fourth principle of the constitution is not inconsistent with the provisions of the Sharia, which is a condition for the validity and enforcement. Thus, this research investigates the stipulation in the law of contract in Iran law as well as Islamic jurisprudence.

The Importance of Consistency in the Financial Arrangements at Divorce

While the ALI Principles express a concern for "an equitable sharing of the losses from the dissolution of the family relationship" in the financial arrangements at divorce, a subtler, but equally important, goal should be consistent outcomes that encourage decisions that increase

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social welfare. The current inconsistencies work to frustrate that goal. Social welfare is increased when choices are made for which the benefits exceed the costs and the preferred choices result in the largest net benefits. Many of the decisions made by adults prior to and during marriage are influenced by the financial arrangements, if they divorce. For example, if a divorce can be obtained easily based on no-fault grounds, but spouses are not adequately compensated for the diminution in their earning capacity because they sacrificed a career to work at home during the marriage, we would expect spouses to be reluctant to work at home during marriage. Generally, people expect to be rewarded for their sacrifices and the larger, more predictable, and consistent the rewards, then the more likely they are to incur the sacrifices.

Marriages often benefit from sacrifices by family members. At the onset, there is the sacrifice of the opportunity to marry someone else. Sacrifices continue during marriage as spouses become parents and as they accumulate property. In all these cases, the sacrifices are incurred willingly because they are associated with substantial benefits. So long as the perceived net benefits are positive, these choices increase social welfare.

By ignoring the inconsistent statutory financial arrangements, negotiated divorces in the past had the ability to increase social welfare. For most of American history, the consensus was that seldom would a divorce improve social welfare and, therefore, there were severe restrictions on it. This was motivated, in part, by one man rarely being capable of supporting two families. In the 20th Century, divorces became more common based on fault grounds. Still, it was not likely that a spouse wanting a divorce could conveniently obtain evidence of fault such as adultery, desertion, or cruelty. Adultery, for example, was only a ground for divorce if asserted by the innocent spouse, not the one committing the adultery.³¹ Therefore, most spouses who wanted a divorce had to obtain the cooperation of their mate.

Central to that cooperation was a package of concessions. While statutes established the financial arrangements at divorce, in their negotiations the spouses could ignore those statutes if the prescribed outcomes were inferior to those that they could arrange for themselves. Initially, by getting married the spouses must have concluded that the marriage increased their welfare and, therefore, that of society. Hopefully, that state continued. However, sometimes a spouse decided that he or she would be happier divorced.³² At that point, it was not clear whether social welfare would be improved by a divorce. That would only occur if the benefit to the initiator exceeded the costs to others, especially the other spouse and their children. Ignoring the underlying statutes, the spouses could investigate whether there was a set of transfers from one to the other that would leave them both better. This occurred in an environment in which both spouses knew that the optimism that existed at marriage was no longer realistic. So while spouses who initially did not want a divorce would have preferred that the marriage returned to a happier time, they knew that was not likely. Therefore, there may have been a bundle of periodic payments, child support and property that the reluctant spouses saw as preferable to the current marriage. Any cost imposed on the children was in part addressed by the parent anticipating custody.

2. PROPERTY DIVISIONS

Inconsistencies occur in property divisions because of the lack of a clear understanding of what is property and how it is affected by marriage. This is especially important because the Uniform Marriage and Divorce Act places the primary emphasis at divorce on the property division. Traditionally, the purpose of the property division was to give to each spouse that property that he or she equitably owned, recognizing that in marriage the title to property often does not correspond to the rights of ownership. This apparently straightforward process has been applied in an inconsistent manner. First, there are problems with the identification of the assets that should be considered in the property division. Second, inconsistencies exist in the consideration

of what is separate, in contrast to marital, property. Last, in many states the criteria used to allocate the items identified as property is so broad that virtually any outcome is legally possible.

Provisions of the law of marriage in Iran law

Contract is one or more persons against another or others and accepts an obligation (183 articles of civil law). It is also a condition of the obligation and commitment to the sale or other disposition of any Contract (Ebn Manzour). Furthermore, If it's denying that a certain person is obliged to transfer the right either doing action or prevent doing action (Allameh, 2008). Therefore, under contract to the benefit or detriment of any condition that requires someone to be called Stipulation, even before the conclusion of the contract was negotiated on the conditions and according to the contract is concluded (Langrodi, 2009). However, the contract necessarily have to be specified (Allameh, 2008). Sometimes the terms of the contract have been reviewed under the stipulation (Katozian, 1988). This contract is divided by wrong term, correct and diriment. One of correct term is action term. Under the law, including Article 237 of the Civil Code and Islamic principles is necessary to do action and executive guarantee. Condition of marriage is merely to adapt to requirements of modern family life and it is expressed in order to decrease conflicts and Family struggles and decision-making powers granted to spouses in marriage. Ethical guidelines and recommendations are not the sole solution and it seems we can solve problems by law as well as the most logical solution to the legal rules and principles of faith to comply with the legal. Conditional marriage is efficient in order to power of making decision and action against husband (Momeni, 2009). Article 1111 of civil law, the agreement on the terms of the couple's marriage, as opposed to denying and marriage is allowed. There has been difference between natural of marriage "Theoretically, natural of marriage principle is sexual relationship and each condition of forbidden this relationship is diriment and on the other hand natural of marriage is Mahram and being halal not necessarily sexual relationship (Pir Abasi, 2005) or t"object and purpose of marriage is genital parity. Therefore, necessity of marriage is relationship and aim of the marriage is legitimate relationship. Thus, opposite condition is opposite of natural marriage principle and if it is not opposite of intention, it is opposite of law and invalid (Mohaghegh Damad, 2002). In overall, there has been difference between inherent self-denying and marriage; however, commensurate with the nature of marriage it seems aim of marriage is legitimate relationship between couple and realize the benefits of ownership of the husband to the wife gratification (Momeni, 2008).

Transfer of property from wife to husband as much as half of Finance

Including the terms of the marriage contract that the parties can also agree on financial affair of couple and sign it voluntary by couples this condition is as following urging couples to divorce if the wife and the wife's fault divorce citing half of property transfer to wife in during couple period. If the condition of signing marriage will be legal guarantees and guarantees of non-implementation of the relevant provisions of the Act to amend the Divorce Act 1990 which leads to impossibility of performing of divorce. The new law enforcement under Article 29 is provided for Family Protection Act 2012. Requirement to transfer half of her husband assets in the marriage is couple to sign up; commitment to free and gratuitous transfer and acquisition of assets by half, even if the wife is an action condition. This condition is one of correct condition. Since, during marriage bet that half the acquired assets of during the divorce parity will transmit the wife. After determination by the court that the her husband duty, law enforcement, and he has committed to implement the provisions of clause (Safaei and Emami, 2007). Katozian believes, this condition is severely doubtful and it clumsily imitate the Western culture as well as this condition entered from France and there is not any history of religious law in Iran (Katozian, 1997). A group of teachers in addressing the legitimacy of this condition agree that

the condition is unknown because it is invalid. Because such a contribution and future of contribution is unclear or unknown risk of the investment is uncertain and is highly doubtful (Katozian, 2011).

Financial condition for marriage contract in Islamic religious

Vast religious faith of Jafari belief in the validity of the license has Stipulation (Najafi, 1987). Imami legal sources said that if the parties to the transaction, provided that interest them or one of them, such a condition is true (Amili, 1943). Imami any special conditions for its invalidity is authorized (Mohammadi, 2011). Imami has the contemporary scholars, including even if the obligation to transfer up to half of the assets acquired during the marriage parity with the knowledge and consent of the parties' Stipulation is not problem.

Guarantee performing of action condition in marriage period

Achieving a condition as necessity and it is based on in period of contract; since, aim of this condition is doing action and it is necessary to ensure about this condition; hence, other condition is not guaranteed. In other words, conditions of beyond the contract is not necessarily to do (Allameh, 2008)

3. CONCLUSION

In Iran law, financial situation during marriage contract is contractual basis to Article 1119 of civil law. If the parties agree that during the marriage is legal guarantees and in this respect, condition the transfer of assets as much as half of assets as a condition of marriage has been printed in 1983. It is not nothing except agreement of couple; although, lonely this agreement is not valid and must be formal and sign up by couple.

In Islamic jurisprudence and all of Islamic religious express that condition of marriage must be considered if it is not opposite of contract of marriage and it is consistent with Islamic sharia due existence of Ayat Quran and Ahadis. Furthermore, the requirement as a condition of financial assets bisection themed couples commitment to transfer half of her estate to the right to divorce his wife if be unofficial with fault of couple; in according to this condition and no background in Jurisprudence. However, it can be comparable to similar cases and based on legal principles and considering the lack of direction on its invalidity ruling on the validity.

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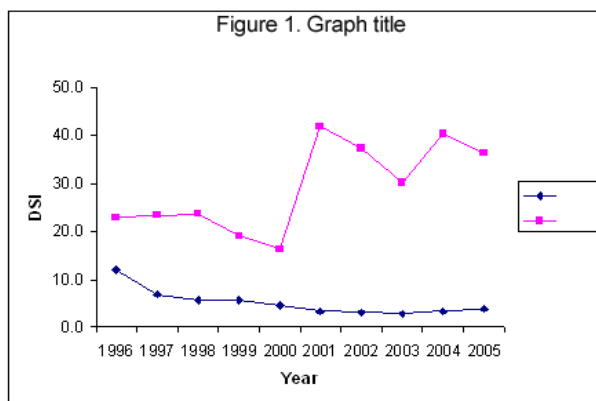


Figure 1. Legend for figure 1.



Figure 2. Legend for figure 2.

Table 1. Legend for table 1.

	Reading 1	Reading 2	Reading 3	Reading 4
Day1	data	data	data	data
Day2	data	data	data	data
Day3	data	data	data	data
Day4	data	data	data	data

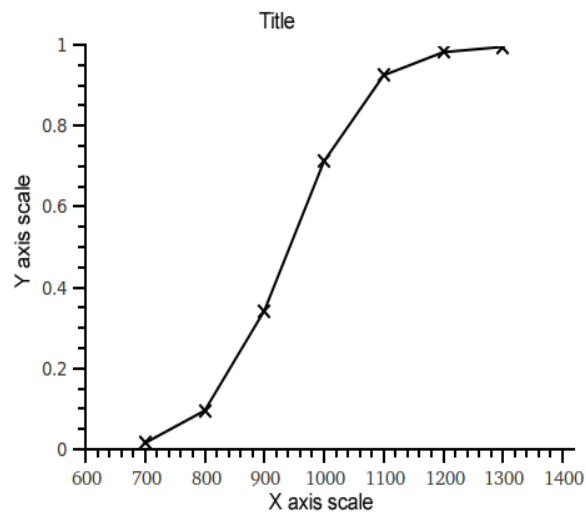


Figure 3. Legend for figure 3