

Financial Relations Between the spouses after Marriage Dissolution

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ABSTRACT: Family is the central part of society. Marriage contract creates some rights and duties for wife and husband which are called marriage effects by lawyers. Marriage effects include two parts: some of these effects have financial aspects during marriage and after its dissolution, and the other one consists of non-financial rights and duties. Considering that, marriage at first is a non-financial contract and spouses' relations are more important than that, the importance of financial relations between them especially after dissolution of marriage contract cannot be ignored. Therefore in the present study, the reasons involved in marriage dissolution and the rights of the wife are examined.

INTRODUCTION

Marriage dissolution is an end for marriage which is caused by eight reasons, the wife has different financial rights after marriage dissolution such as inheritance, alimony for pregnancy, properties which are inherited to her by husband, the wage for the actions done by her on husband's demand or voluntarily, and the rights that were conditioned under marriage contract.

1. marriage dissolution and its reasons

Literally dissolution means unfastening of a knot, clearing away, opening and disintegrating, as said in philosophy: dissolution of each being is verified by the dissolution of the face and dissolution of each compound is verified by the dissolution of its compound face not by annihilation of its components, because components would not vanish anyway, but they would change their face to another one.

Marriage contract is dissolved and marital relations finish by eight reasons:

First: Divorce: husband with unlimited points and wife with limited points which is regulated by law can refer to family court and request for divorce, after divorce, marriage contract is dissolved and marital relations finish.

Second: Termination: presence of some flaws in wife or husband such as impotence in husband or leprosy and being crippled in wife can terminate the marriage contract by one side.

Although, using this right for man and woman is based on the fact that they were not aware of those flaws before marriage. Otherwise, they cannot use the flaws against the other one. And also insanity is another case, if it is not transient although it is permanent or periodic can be a point for termination.

It is worth mentioning that, even if the wife knows about the husband insanity after marriage, she can use the right for termination but husband cannot.

The right of termination that is given to wife and husband is urgent, in that when one side finds out the other side flaw must use it, otherwise this right would be removed. Of course the urgency of the case would be determined based on customs.

Difference between termination of marriage and divorce

Although, they look the same in Eddeh(that is the period after separation that wife cannot marry, (there are many differences among them. Followings are some examples:

In divorce the legal recitation of divorce is pronounced formally, but for termination it is not needed.

For divorce, two impartial men are necessary to witness the divorce, but for termination it is not needed.

If the divorce is before the marital relations, wife can request for half of the marriage portion while in termination it would not belong to wife.

Cases in which wife can request for the termination of marriage contract

Khasa: it means to castrate, to remove the testicles

Aanan: it means impotence. If impotence continues after marriage, wife can request for termination.

Cut off penis so that the man cannot do marital relations.

Insanity of man, even if it is known after marriage can cause termination.

Cases in which husband can request for the termination of marriage contract

Gharan: that is an appendicular bone mass in female genitalia which prevents from fertilization

Leprosy: physical illness

Vitiligo

Etza: attachment of vagina and meatus urinarius due to sexual relations or attachment of meatus of urine and feces.

Being crippled

Blindness by both eyes

Conditions in termination of marriage

When man or woman knows about above mentioned flaws and again they marry, the right of termination is cancelled.

If wife is afflicted with one of the flaws that get man the right of termination in the time of marriage occurrence, man will not have this right for termination.

When man gets one of the venereal diseases after marriage, wife can avoid sexual relations with him, but does not have the right for termination. In this period, man must pay the alimony to wife.

When woman make certain conditions at the time of marriage contract that man must have a special attribute or trait, and after marriage it becomes known that he does not have that attribute, woman has the right for termination.

Third: Grant the time: granting of time is specific for temporary or discontinuous marriage, and husband can grant the rest of marriage time to wife.

Fourth: Expiration of the period: there is no divorce in temporary marriage, but there is granting of time or expiration of the period (Khomeini, Tahrir, vol3, p519)

Fifth: Death: after the death of wife or husband, marriage contract cancels automatically.

Sixth: Apostasy: it is one of the cases that if it happens after marriage, wife and husband must avoid having any relation with each other (not regarded as wife and husband any more) and as a result, marriage contract is dissolved without using the right for termination by wife or husband (Khomeini, Tahrir, vol3, p 509)

Seventh: in some cases breast feeding can dissolve the contract for example when a man's older wife feed the younger wife (Khomeini, Tahrir, vol3, P485)

Eighth: cursing is one the cases by which marriage is dissolved and forbidden (Khomeini, Tahrir, vol3, p513)

Wife's rights after marriage dissolution

Wife's alimony after divorce

If the divorce is revocable, wife's alimony during Eddeh (the time after divorce that woman is not allowed to remarry) must be paid by husband, unless they divorce as a result of incompatibility; because Eddeh is the same for revocable divorce and married time. According to unanimity of the religious experts, in irrevocable divorce if the wife is not pregnant, alimony is cancelled after divorce. And if she is pregnant, alimony must be paid until the end of pregnancy period.

As mentioned in Article 1109 of civil law

Husband must pay alimony in Eddeh to wife divorced revocable, unless they divorce as a result of incompatibility. There is no right of alimony for wife after marriage cancellation or irrevocable divorce when she is not pregnant, if she is pregnant, alimony is paid until the end of pregnancy period.

Writer of the book "Vasaie Alshiite" in volume 15 of the book "Alnekah (marriage)" it opens a new chapter called "a chapter about necessity of alimony paid to revocable divorced woman and necessity of her living in husband house during Eddeh; also lack of necessity when wife is not pregnant"; and mentions eleven narratives regarding this discussion.

In the first narrative of the same chapter, one is mentioned from

Imam Kazem (peace be upon him): in irrevocable divorce, the wife has separated from husband and has no right for alimony or living in his house. But in revocable divorce as long as the third divorce is not pronounced, it is necessary for wife to stay in husband's house and alimony must be paid to her.

The late Saheb Javaher narrated some narratives about this rule and expresses his unanimity:

The alimony of revocable divorced woman is necessary just like not divorced woman, and there is no disagreement on it among religious experts.

Wife alimony in Eddeh after death of husband:

Many of religious experts do not regard alimony as necessary in Eddeh after husband's death.

As mentioned in Article 1110 of civil law:

There is no right of alimony for wife in Eddeh after husband's death.

If wife of the dead person is pregnant, there are two narratives: one set of narratives say alimony is not necessary, and the others say that alimony is necessary from the inheritance of the baby that is in wife's womb. Iranian lawyers have also two ideas about pregnant woman:

Some apply Article 1110 of civil law and believe that alimony belongs to both pregnant and not pregnant women, and some others apply Article

1109 of civil law and say: because woman's alimony is necessary in irrevocable divorce and marriage termination, in Edeh after husband's death alimony must be paid to wife as well. Also it looks much closer to justice and fairness.

Inheritance Wife's inheritance

The other wife's financial right which is made by marriage is inheritance from dead husband's properties.

The case of wife's inheritance has changed over time just like other rights. In most of the societies and former systems, wife has been deprived of inheritance or just few of that belonged to her; as the result wife didn't have independence and legal entity and men were their guardians.

This kind of deprivation, in some of the societies was in greater extent; and not only had the wife inherited anything from their husband, but also they themselves were part of husband's properties.

In this case, Islam proposed a new idea and broke the ignorance traditional customs and put some rights and inheritance in dead husband's properties.

In Iran's laws that are based on Islam and Imam's jurisprudence, women inherit both as a relative and relative through marriage, provided that the marriage contract is permanent.

God in ayah 12 of this sura in Quran describes wife's inheritance: if you don't have any child, half of your heridity inherits to your wife; and if they have any child, a quarter of that belongs to you. After the administration of the will and giving their rights, a quarter belongs to wife if they do not have any child, one eight belongs to them if they have any child.

As you see in this ayah, woman's inheritance is considered half of man's inheritance. This has made those who are not familiar with Islam financial system complains about it. But the philosophy of this can say in brief as:

This difference in division of inheritance counts no value for the other side and double inheritance of men never refers to his higher value than women.

The basis of this division is to balance each person's right with his/her duties.

Considering this fact removes any discrimination from it. If the case of inheritance as part of family rights is investigated along with other parts of the legal system; also the collection of family legal system as a part of Islam legal system and women's rights and duties in different occasions and at home, especially in economical matters, are compared with men it will clearly turn out that in this division not only women are oppressed but also they receive more profit than men.

Although, this kind of division looks in favour of men for inheritance and economical facilities, the reality is not like this. However the result of such division is that men will receive double in properties, in consuming stage, women will profit more; because women can save it and there is no necessity in spending of that but men's portion will come back to their family for earning a life. In addition, women can invest their portion in economical activities and profit by them.

Double portion for men in inheritance is not a general rule. Because in some cases both men and women inherit the same (for example dead person's mother and father will receive the same 6.1 portion if dead person has any child). Perhaps women inherit more than men, for example when dead person's heirs are his/her father and a daughter, father will receive 6.1 and daughter 6.3, and the rest is divided between them based on Article 908 in civil law.

With a will spouse's portion can be compensated.

Will

From woman's rights after marriage dissolution is the right that man inherited to her. This will is a way for compensation in woman's inheritance. Because determining couple's portion and the difference is based on Quran, and it is not possible to change the amount of portion based on theology. But it is possible to increase the wife's portion by resorting to side-arrangements. The simplest way for a husband who wants his wife to inherit more than other heirs is to arrange a will. A man can will one third or less of his properties to his wife.

D. wife's wage

If wife has fulfilled her duties according to religious law voluntarily, and that is proven to the court, the court will calculate the appointed wage and command its payment.

The wage appointed for wife doing house chores is admitted by law and the jurists.

The conditions for wage payment:

The essential conditions for appointing the wage and marriage portion to wife based on Act of amended provisions are as following:

Husband request for divorce.

Occurrence of divorce is due to the wife's bad behavior and avoiding doing her duties.

Divorce has occurred.

Wife has done the actions that were not her duties voluntarily.

Appointing of wage upon the husband's admission and command, is an implicit agreement that is made between wife and husband without calculating the amount of the wage. Therefore, the court without considering husband's financial position, will appoint the amount of wage for wife's done actions.

Financial rights that are maintained under the marriage contract

A condition is a necessity and subordinate commitment which is applied under marriage contract along with the main commitment. It is completely related to marriage in that if marriage contract dissolves by any reason, the condition is cancelled as well.

In Iran's civil law which is based on Imam Jurisprudence, husband has some rights and authorities that wife does not have. By conditions under marriage contract, women can compensate some lacks in their legal deprivation and prevent men probable abuses.

Both parties of marriage contract apply any condition which is not against the mentioned contract. For example, a condition that husband can't marry to another woman, or if husband becomes absent for long or does not pay alimony or behave badly and living has become intolerable and woman is attorney with the right of substitution can divorce. In addition, by resorting to these conditions, wife can receive some financial rights for herself such as apply a condition under which whatever they receive during their joint life must be divided in half between them.

According to Seyed Ali Tabatabaee and Korki the researcher, a condition which is against the religious law is void, unless it can prove a reason.

By a condition which is against the Book and custom, we mean a condition that is generally or specifically against the things mentioned in the Book and custom. It means a decree that is proven based on the Book and customs and a fake condition attached to it that is against the assigned and enacted decrees.

It can be inferred from the jurists' viewpoint that if a condition that change something lawful to unlawful or vice versa is not true, because it is against the Book and customs; but forgery of a condition for leaving an unlawful action or an action that is disapproved but not absolutely unlawful is true and may be an emphasis on leaving of unlawful or disapproved actions.

Result

Eight cases cause dissolution of marriage.

After dissolution of marriage, wife has some financial rights such as inheritance, alimony, rights that are inherited to her, wage for her actions, and the rights she conditioned under the marriage contract.

REFERENCES

- Abuzahreh M. Alahval Alshakhsie, couples chapter, Qairo.
Ameli, Shahid Sani, Masalek, vol2, p234.
Emami, Family Rights
Helli J. Sharaye Alislam.
Hor Amelli H. Vasaiel Alshiite ela Tahsil Masael Alshariite, Dar Ehya Aktsrat Alarabi, Beirut, vol 10, p449.
Kashani Hanafi, Abu Bakr ebn Masoud, Badaye Alsanaye fi Tartibe Alsharaye, Pakistan, first edition, 1989, vol7, p17.
Khomeini R. Tahrir Alvasileh, translated by Ali Eslami, publication office of Modaresin society.
Khuie SA. 1990. Menhaj Alsalehin, Madineh Alelm, Qom, 28th edition, p289.
Makarem Shirazi N, others. 1987. Tafsir Nemouneh, library of Islamic books, Tehran, vol3, p267.
Manouchehrian M. 1963. woman right in universe and pattern of lae in family, Iranian female lawyers,
Motahari M. woman right in Islam, Sadra publication, Tehran, 21th edition, winter.
Najafi MH. Javaher Alkalam, fi Sharhe Sharaye Alislam, library of Islamic books, fall.
Sajadi Farhang, Rational sciences
Tabatabaee MH. 1984. translated by Seyyed Mohamad Bagher Hamedani, Tafsir Almizan, Islamic Advertising office, Qom, vol4, p534.
Tousi M. Khalaf Ketab Ghaza.