

The Study of Financial Burdens of Divorcement in Iran's Codes of Law

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Abstract

In Iranian culture, family is of a great importance and the legislator and canonical ruler have confined parties' freedom of will to social life perfect continuity because of its association with the family life and the marriage dissolution cases have been pointed out in this regard. The effect of divorcement as the most prevalent factor behind marriage disintegration on the divorcee's financial status has a considerable place in the today's communities. Based on Iran's rules, a man can divorce his permanent spouse any time he wishes but the existence of such a provision would sometimes be accompanied with family system destabilization and the stipulations such as assets' halving, equivalent fair, palimony, period of waiting, forced endowment and so forth have been devised by the legislator in line with constraining and restricting the aforementioned right. In the present study, we have dealt with the details on divorcement and its financial burdens by getting assistance from the elaboration of the relevant theoretical principles. It is hoped that the findings obtained from this venue can provide for subliming the knowledge and awareness of the interested reader in this area.

Key words: Husband, Wife, Divorcement, Iran's law

1. INTRODUCTION

Family is the smallest and the most underlying part of every society which constitutes a healthy society. The today's civilized and industrialized society has been followed with special outcomes among which the weakening and destabilization of the family foundation, reduction of affection and love among its members can be highlighted. Since family is considered as the cornerstone of the society, there is a need for strategies to be adopted for its solidification and the maximum efforts should be made to create sincere and affective relationships inside a family otherwise irreparable losses would be incurred. Legislators, jurists, psychologists, each equipped with their own tools, try to make the foundation of marriage more stable and impermeable.

On the other hand, the family institution importance has made the Iranian legislators to state in the tenth Act of

the constitution that "because family is the fundamental unit of the Islamic society, all of the related rules and regulations and programs should be in line with easing the family formation, guarding its sanctity and stabilizing family relationships based upon Islamic law and ethics", and this is continued in the 21st Act of the constitution that the government should be made committed to observe all of the women's right as part of the family pillars in terms of adhering to canonical principles (Kazemi, 2010, p.60).

Marriage is a contract based on which a man and a woman get legally united at least for the purpose of negating coitus deprivation or besides denying such a deprivation for reasons such as forming a family or a joint familial life. It is worth mentioning that divorcement and revocation are among the reasons behind marriage dissolution (Ja'afari Langerudi, 2008, p.721). Although marriage takes place in the form of a contract and based on the two parties, that is a man and a woman, agreement and their intention and satisfaction, but its disintegration via the parties' contentment in its popular meaning, i.e. rescission, has not been accepted rather marriage dissolution should happen through a legal unilateral act. It means, as it was mentioned, it happens either through revocation which takes place via a voluntary unilateral action taken by the wife or husband or via divorcement. It should not be left unsaid that the

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increase in the divorcement statistics is not unique to a certain society rather it is a general nuisance of the century. In sociological terms, wherever the modern west's rites and customs have penetrated more the divorcement statistics have also gone up. Among the factors which have rendered divorcement a rather normal issue one can point to the growing social acceptability of divorcement, reduction in the women's economical dependencies on men and new forms of family formation. Divorcement is among the most important phenomena of the human life which is firstly enumerated as a psychological phenomenon; because it not only influences the mental equilibrium of two human beings but it also affects the kin, friends and relatives. Secondly, it is an economical phenomenon; because it leads to the disintegration of family as an economical entity and it disequilibrates the humans' mental balance that can be followed with heavy adverse consequences in their economical lives. Furthermore, it is a phenomenon influencing the entire aspects of population in a society because it is effective on population quantity of a society. And, on the other hand, divorcement is a cultural phenomenon. This way, it can be said that the society in which divorcement exceeds a normal threshold would never enjoy healthiness. From another perspective, divorcement is a relational phenomenon, in such a manner that marital relations or bonds are extraordinary in a society lacking healthy, proper and natural relations (Kazemi, 2010).

According to what was said so far, one can figure out the idea that divorcement, as one of the significant issues in family codes of law, possesses financial and nonfinancial effects and the present study deals with the conditions pertaining to the way such effects are contemplated in the statutory provisions as well as the necessity to take probable reforms therein. The study methodology is a descriptive-analytical one the data for which have been extracted from the relevant library or documentary sources and through studying the jurisprudential, law books, articles, dissertations and law-jurisprudential sites. Based on the study method, data are collected in a qualitative manner and they are comparatively discussed and investigated and data analysis has been performed based on logical, inferential and contrastive methods.

In the following sections, after the study objectives and questions are proposed, the upcoming sections deal with mentioning cases regarding the study theoretical basis, divorcement and its financial effects and finally discussions and conclusions are dealt with accordingly.

1.1. Study Objectives

1. Getting familiar to the divorcement financial burdens and Iran's codes of law in this respect.

1.2. Study Question

What do divorcement financial effects mean in Iran's codes of law and what items do they capture?

1.3. Study Hypothesis

Divorcement financial effects incorporate palimony, waiting period, equivalent fair, forced endowment, assets halving financial condition and monthly pension.

2. STUDY THEORETICAL BASES

2.1. Marriage

Jurists have offered numerous definitions for marriage, including "marriage is a legal relationship which is yielded as a result of a contract between a man and a woman and it bestows them with the right to enjoy a coitus fruition of one another" (Emami, 2002, p.326); "marriage is a contract by means of which a man and a woman get lawfully united for the purpose of coitus deprivation negation or in addition to it for the purposes such as formation of a family and a familial joint life" (Ja'afari Langerudi, 2009, p.721); "marriage is a legal-affective relationship which is resulted from a contract between a man and a woman and they are given the right to live together accordingly; and the distinct manifestation of such a relationship is revealed in coitus fruition". Thus, it can be said that the right to sexually enjoy one another is a common issue pointed out in the definitions of marriage contract made by the aforesaid jurists (Mohaghegh Damad, 2007, p.22).

2.1.1. Types of marriage

Two types of marriage are realized in Iran's law; permanent and temporary. Permanent marriage encompasses a legal relationship which is established by means of a perpetual contract between a man and a woman and they are, consequently, given the right to enjoy each other's coupling. Although permanent and discontinuous marriages are shown as being different in many works the natural distinction and the main difference between these types of marriages is that in discontinuous marriage the husband and wife decide to get married temporarily and after the duration of marriage is expired the marriage contract is resumed if they are willing to continue otherwise they will get separated after the marriage term is expired, whereas the permanent marriage is of a continuous, lasting and perpetual nature (Emami, 2002, p.27). "Marriage is said to be discontinuous when it is established for a specified period of time".¹

2.2. Divorcement

Legally, in Islamic jurisprudence and in civil law, divorcement is a unilateral action taken by the man or a

1 Article 1075 of civil law

representative of him. Even in cases where divorcement takes place based on couples' agreement and takes a deposal or aversion form it has to be considered as a unilateral action. That is because the couples' agreement which is the precondition and the motivation of the divorcement is different from it and divorcement means the last action which is actualized via voicing the divorcement order and marriage relationship is dissolved and it does not originate from parties' wills (Mehrpur, 2008, p.28).

2.2.1. Types of divorcement

From the jurisprudents' points of view, divorcement is primarily divided into "heterodox" and "traditional". Heterodox divorcement is a separation which has been performed against the conditions provisioned in canonical rules and such a type of divorcement is invalid. The examples are divorcement in inter-menstrual state, divorcement in menstruation and puerperium and the threefold divorcement without the parties' recourse right (Safa'ee and Emami, 2007, p.250). By traditional divorcement a type of separation is intended that corresponds to the regulations and with perfect adhering to the canonical conditions. And, this latter one is classified into two groups in all of the religions:

- a) Irrevocable divorce: the man is deprived of recourse right in waiting time.
- b) Voidable divorce: in such a type of divorcement the man has the recourse right in waiting time as agreed upon by all the religions. The divorce is considered as voidable if the following conditions are met:
 1. The wife should have consummated her marriage.
 2. Divorce should not be in exchange for a donation of a property by the wife.
 3. It should not be a third divorcement.
 4. The divorced woman should not be menopause: only Imammiyeh necessitates such a condition.

Divorcement irrevocability depends on external factors which are out of the husband's volition. Such as menopausal, not having consummated marriage, the wife's being below puberty age, deposal and aversion in case the wife does not resort to forgiving her dowry and third divorcement after three consecutive marriages (Safa'ee and Emami, 2007, p.251). Only Hanafiyeh states that when the husband tells the wife "I have divorced you for an irrevocable divorcement" or if other expressions with such a meaning are used the divorcement is a permanent one. The difference it has with voidable divorcement is that in the latter case, husband can recourse in the waiting time quite contrarily to the permanent divorce (Safa'ee and Emami, 2007, p.250).

Also, divorce can happen as a result of the requests made by the husband and wife, and, in case of the first one, the man can divorce his wife any time he wants, without

him being obliged to mention the reason. However, in jurisprudential religions, there are discrepancies regarding its prohibition and heinousness and the principle of allowance and forbiddance (Safa'ee and Emami, p.250). In civil law, as well, based on article 1133 such a right has been authorized to men.

In Iran's legal system, due to articles 1129 and 1130 and their amendments in civil law, the legislator has predicted stipulations for divorcement as requested by the wife which is based on Islamic jurisprudence. Article 1129 of civil law pertains to the husband's refusal of or inability to pay palimony and that the courts have no possibility to require the husband to pay palimony in which case the wife can refer to a judge and claim for divorcement and the judge obliges the husband to divorce his wife. Article 1130 of civil law (amendment 14/11/1991) pertains to insolvency and hardship based on which if the continuation of marital life for the women has to be accompanied with intensive pains and therefore is made intolerable they can claim for divorcement to a court. Based on the abovementioned cases, civil law, following the lead of jurisprudence, allows a wife whose husband has been absent, with no trace, for four years to file a divorcement claim (article 1029 of civil law). The wife's agency for divorcement has been accepted in civil law the same as it is in Islamic jurisprudence.

3. DIVORCEMENT NECESSITIES (ASSETS' HALVING CONDITION, EQUIVALENT FAIR, FORCED ENDOWMENT, PALIMONY, MONTHLY PENSION)

In this section, regarding assets' halving condition, firstly the possibility to include such a condition has been investigated and then statutory and jurisprudential conditions and documents of equivalent fair, forced endowment, palimony and monthly pension are put forth in separate discussions.

3.1. Halving Condition

Inserting the condition of transferring up to half of the husband's assets in marriage deed, in case it is signed by the couples, would provide for the obligation of free and gratuitous transferring and giving possession of up to half of the properties and assets acquired by the husband during marriage course, along with the related conditions and basics actualization, all of which have been predicted in civil law and the wife can require husband to implement it. The condition of transferring up to half of the husband's properties to the wife is some sort of act condition and the action under such an obligation is a legal act. This condition is considered as a type of authentic condition (the condition of implementing the obliged action as proposed

in article 234 of civil law) because in the course of signing a marriage contract the husband is obliged to transfer half of the existent properties acquired during the marriage to the wife upon divorcement and after the exact amount of this half of the property is determined by the court the husband's obligation takes a legal executive sanction form and the husband is therefore bound to the condition's content implementation (Safa'ee and Emami, 2007, p.66).

3.1.1. The drawbacks of halving condition

There are drawbacks in such a condition, including the followings:

- a) **Ambiguousness:** It means that the property included in the husband's obligation at the time the marriage contract is taking place does not exist and it is not clear whether the husband would have any properties at the time of divorcement or not and assuming that the husband will acquire properties in future, its value is not clear, therefore would such an ambiguous condition be legally credited?
- b) **Determination Criterion:** One of the other important shortcomings of such a condition is that it determines the maximum boundary of the husband's obligation without a minimum being defined and the husband's properties transferring possibility from a very low percentage for instance from half a percent to fifty percent is considered. Although in the context of the condition there is no criterion specified for determining such a percentage, determination of the amount of the property that should be delivered to the wife, based on this condition, is a duty of the court.

It is worth mentioning that the paragraph (a) actualization conditions as outlined by the subject of assets' halving inserted in the customary marriage deeds issued by the country's Instruments and Landed Property Registration Authority are implemented on the condition that they are voluntarily endorsed, divorcement happens, the wife files a lawsuit for it, the divorce does not originate from the wife's violations and misbehavior and misconduct, the divorce is not requested by the wife, the properties are existent and proved.

3.1.2. Halving condition effects

3.1.2.1. Equivalent fair and forced endowment non-collectivity

Forced endowment or (Compulsory) donation cannot be added together with equivalent fair and when a husband is sentenced by a court to pay an equivalent fair, he cannot be ordered to pay forced endowment; because corresponding to paragraph (b) of the note 6 of the single article amendment to the regulations pertaining to divorcement approved in 1992, by the National's Exigencies Council, "in cases, other than the ones proposed by the paragraph (a) in

matters that the wife should be paid with an equivalent fair, a sum is determined for the wife, out of an endowment act, by the court according to the years of joint life and the type of works performed by her in the husband's house and the husband's financial power".

3.1.2.2. Transferring of half of the assets and equivalent fair non-collectivity

Concerning the idea that whether transferring half of the properties to the wife as an obligation resulting from the condition, of a contractual essence, can be collectively added together with requiring the husband to pay an equivalent fair for the joint life period, which is a sort of legal support, or not, it can be asserted, by taking advantage of general rules, that transferring up to half of the properties upon divorcement has been wished for by the husband and he has accepted it freely and voluntarily. Implementing the obligation originating from such a condition has nothing to do with both the type of the job the woman has done and the equivalent fair of her job in the husband's house and it has to be paid one way or another. Therefore, a woman who has taken possession of half of her husband's assets as a result of an aforementioned printed condition can claim for an equivalent fair for the tasks she has done without gratuitousness. Nevertheless, according to the expression used in the single article note, it seems that claiming for an equivalent fair cannot be summed with transferring the husband's half of assets and vice versa; because, the philosophy behind paying an equivalent fair is supporting a woman who is divorced despite having goodwill and tendency to keep on a joint life. The legislator wants to support such women and creates an appropriate financial source for them.

3.1.2.3. Transferring half of the property and forced endowment non-collectivity

In paragraph (b) of the Note 6 of the single article amendment to the regulations pertaining to divorcement, the legislator has allowed issuing a sentence for granting the forced endowment when the equivalent fair (the subject of concern to paragraph (a) of the same note) has not been paid to the wife. On the other hand, equivalent fair can be granted to the wife when there is no other condition agreed upon between her and her husband at the time of signing the marriage contract; since, whenever they agree on such a condition, it should be considered as the base of action (paragraph (a) of the same note). Therefore, transferring up to half of assets as a condition is superior to paying equivalent fair and paying equivalent fair precedes forced endowment payment. As a result, the condition of transferring up to half of the assets and forced endowment cannot be collectively compared and the wife cannot enjoy both of them at one time.

3.1.2.4. The precedence of transferring up to half of the assets to equivalent fair and forced endowment payments

Note 6 of the single article amendment of the regulations related to divorcement as approved in 28/09/1992 by National Exigencies Council states that “after divorcement, in case that the wife makes a request for claiming a wage for the tasks and duties she has not been canonically responsible for, the court primarily tries to secure the wife’s request by shooting a compromise. And if such a compromise is not attainable, if a condition has been set when signing the marriage contract or out of the marriage contract, regarding the financial matters it is taken as the base of action, otherwise, if the wife is not the one claiming for divorce, or if the divorcement request is not a result of the wife’s violations of her marital responsibilities or a result of her misbehavior and misconduct other methods should be applied.

3.2. Equivalent Fair

“Forced endowment” and “the marital period equivalent fair” are two legal stipulations which are entered for the first time to Iran’s law as a result of divorcement regulations amendment act enacted by National Exigencies Council in 28/09/1992. The aforesaid law highlights two points in line with confining the right granted to the husband in article 1133 of the civil law regarding divorcement and parallel to preserving the wife’s rights: first of all, divorcement right implementation by the husband is bound to referring to the court and issuing a testimonial indicative of impossibility of reaching a compromise and second, a husband who has applied for divorcing his wife is required to pay a marital period equivalent fair or forced endowment in case of an in-marriage contract financial condition is missing.

3.2.1. Equivalent fair actualizations criteria

In order for a woman to be entitled to an equivalent fair as put forth in paragraph (a) of the note 6 of the single article amendment regulations in connection to divorcement, there is a need for the existence of conditions, including asking for equivalent fair by the wife, the reason for filing such a claim by the husband should not be the wife’s misbehavior and misconduct, no unreligious activities should have been performed, proving that the donations to the wife have not been out of gifting and its verification by the court, proving the husband’s order at works, divorce request by the husband, the absence of a financial condition, inability to reach a compromise and divorcement incidence.

3.2.2. Methods of Determining Equivalent Fair

Legislator considers the courts’ responsibilities of determining the equivalent fair as depending on observing the order of the following scales; which are expressed in an orderly manner and an expert is usually referred to for estimating the fair:

(1) Conciliation; (2) execution of the financial condition and (3) Calculation

3.3. Forced Endowment

“Forced endowment” is an English equivalent for Arabic term ‘Nehleh’ meaning “religion and piousness”. In law dictionary it refers to donating something without receiving a return for it and, put differently, it is a generous act; it is, also, synonymous with gifting and free granting with charging nothing for it (Feyz, 1999, p.306). The late Allameh Tabataba’ee defines this forced endowment as a free of charge donation which is not given for a price (Tabataba’ee, 1987, p.296).

But, regarding Nehleh (donation) which has been mentioned in the single article pertaining to divorcement, according to the fact that the legislator addresses the court and the husband’s satisfaction has been pointed to as the most important attribute of gifting featured by voluntariness and appeasement in this article, it cannot be considered as a free gifting in its specific legal term, but because the legislator has explicitly named such a wife’s financial right as Nehleh (endowment) therefore it has to be incumbently accepted as a compulsory donation (endowment). Some of the jurists have also realized it as a sequence of taking compensatory actions for the benefit of the wife versus husband’s misuse of divorcement authority (Katuziyan, 1992, p.12).

3.3.1. Forced endowment actualization criteria

Paragraph (b) of the note 6 of the single article pertaining to forced endowment states the provisions in this regard; and in cases other than paragraph (a), based on the years of joint life and the type of the jobs that the wife has performed in her husband’s house and the husband’s financial affordability, the court determines a sum, out of forced endowment, for the wife. Thu, regarding the cases outlined by the paragraph (a) of the same note 6, dealing with justifying the issuance of an order for performing the house affairs by the husband and proving that the wife’s intention of doing so has not been solely for the purpose of a generous act, if, despite the other conditions holding true, the equivalent fair actualization cannot be fulfilled, the court specifies a sum of money and the husband is made committed to its payment corresponding to the concept of forced endowment (a free of charge donation by the husband).

3.3.2. Methods of determining forced endowment

Legislator has instructed scales regarding the method of forced endowment rate determination. Paragraph (b) beneath the note 6 of the single article underlines three scales for the court in determining the forced endowment rate, namely, the years of joint life, the tasks performed

by the wife in the husband's house and the husband's financial ability.

3.4. Equivalent Fair and Forced Endowment Statutes in the New Law of Family Protection Approved in 1/03/2012

According to paragraph 8 of article 58 of the new law, the single article amendment to the regulations reforms enacted in 1992 (except paragraph (b) which is related to forced endowment) and the interpretation law of the notes 3 and 6 of the aforesaid single article, the new law versions and the article 29 therein, with form variations, have been proposed as substitutions for it in identifying wife's right to become entitled for former sanctions regarding the in-marriage contract conditions.

Article 29 of the family protection law enacted in 2012 states that "while issuing a sentence according to the in-marriage contract conditions and the marriage years, the court determines everything about trousseau, dowry and palimony of the wife, children and gestation status as well as specifying the equivalent fair of years of being married corresponding to article 336 of civil law and makes appropriate decisions regarding the children tutorship and the way tutorship and fostering fees should be paid. Also, the court, according to the child's affective association and expediencies, determines the order, the time and place of meeting in order for the child to visit his or her father, mother and other relative. Divorcement registration depends on the liquidation of the wife's financial rights. Divorcement can also be registered in case of the wife's contentment or if a decisive verdict is issued indicating the husband's insolvency or setting paying by installments. However, whenever the wife agrees to register divorcement without receiving the aforementioned rights, she can take actions to receive such rights via the justice department's enforcement of rulings division corresponding to the relevant regulations.

3.5. Palimony

One of the legal issues in the Islamic family system is palimony. Palimony is a type of financial duty placed, with specific conditions, upon the men's shoulder, although the women are found with financial affordability. According to article 1106 of civil law, in Iran's legal system "the wife's palimony is on the husband's shoulder in permanent marriage contracts". And, as decreed by article 1111, "in case of the husband's refusal to give palimony, a wife can refer to a court. In such cases, the court determines the palimony rate and the husband will be sentenced to pay it". This is a provision devised for the benefit of the women in Iran's law and a wife can, accordingly, ask for palimony from her husband and she can sue her husband, if necessary, for palimony payment through resorting to civil and penal codes of law. Of course, the wife can only be entitled to

palimony if she obeys her husband and, in other words, if she fulfills her marital life duties: As a result of article 1108 of civil law "whenever a wife refrains from fulfilling her marital life responsibilities without a legitimate excuse she will not be entitled to palimony".

3.5.1. Palimony entitlement

Palimony entitlement conditions have been cited in civil law. Palimony necessitates the following conditions to be met: 1. proper marriage contract, 2. marriage permanency

3.5.2. The criteria and the rate (Examples) of Palimony in Iran's law

Our country's civil law considers the wife's conditions and status as the criterion for determining the palimony rate. Fortunately, article 1107 of civil law, amended in 2002, has removed the ambiguities of the former article and includes all of the normative needs in regard of the wife's status in palimony and stipulates that "palimony includes all of the wife's normative needs concerning her status such as accommodation, garments, food, furniture, treatment and health expenditures and a servant in case of being used to it and as ruled by necessity in case of a disability or an ailment". The difference between these two articles lies in that, firstly, it explicitly highlights the inconclusiveness of the aforementioned cases by using the term "such as" and, secondly, it has contributed the "treatment and health expenditures" to the needs mentioned in the former article in such a way that it is discerned from the article 1107 of civil law that the wife's requirements status is the criterion for determining the palimony rate not the husband's status.

3.6. Monthly Pension

"Monthly pension" is a new provision which is unprecedented in our codes of law and it has been imported based on family protection law enacted in 1974, as excerpted from French law. In article 11 of former family protection law we read "in case a testimonial indicating the impossibility of compromise as documented by examples of misbehavior and a party's negligence is issued the court, based on any of the party's request, can sentence him or her to pay an appropriate monthly pension to another one according to the parties' status and age and the marriage years on the condition that the financial inability of the applicant and the affordability of the other is verified. The abovementioned pension payment to the winning party is reduced with the generation of a sufficient income for him or her or in case s/he gets married again. In cases that the compromise impossibility testimony is issued for the reasons incorporated by paragraphs 5 (the couples' being diagnosed with hard-to-cure diseases) and 6 (couples' dementia and the impossibility of revoking the marriage contract in such a case) of article 8 (the possible cases couples can request a compromise impossibility testimony

from a court), the monthly pension is allocated to the sick or insane party with adherence to the aforementioned conditions provided that the disease or the dementia occurrence has been post-marriage and it will be, in a court order, stopped if the person recovers health”.

3.6.1. *The entitlement causes and the conditions*

Requiring one to pay a pension is made possible based upon a cause which has brought about the condition for issuing the compromise impossibility testimony and it can be one of the two following forms:

- a) Negligence: requiring a wife or a husband for whom a divorcement sentence has been issued as documented by misbehavior or negligence, according to the fact that negligence in article 11 of family protection law implies guilt. So, whenever a divorcement sentence is issued due to reasons such as one of the spouses' guilt or misbehavior, considering all the other conditions holding true, the guilty spouse is obliged to pay a pension to the other. It seems that negligence in this article implies guilt.
- b) Dementia and Ailment: According to aforesaid article 11, determination of pension is sometimes based on the payer's guilt and it is in fact a sort of punishment which has been considered by the law for a spouse as a result of whose fault a divorcement has occurred and it is sometimes not a result of the payer's fault rather a monthly pension is determined for the benefit of a spouse as a result of whose hard-to-cure disease a divorcement has taken place. Issuing a compromise impossibility testimony in these two cases (requiring a wife or a husband as a result of whose hard-to-cure or contagious disease or dementia a divorcement order has been issued) might not be likely to be classified under negligence title and it may not be possible to state that a person who has got separated from his or her insane or sick spouse has perpetrated a guilt, but the ethical and social considerations have made the legislator to grant the sick or insane individual with a right to enjoy a pension (Safa'ee and Emami, pp.260-261). The court orders paying a pension under the following circumstances:
 1. Applying for compromise impossibility testimony by one of the couples;
 2. Claiming for a pension;
 3. The applicant's financial inability and the other party's financial affordability;
 4. Issuance of a compromise impossibility testimony documenting the party's misbehavior and negligence or guilt.

3.6.2. *Monthly pension feature*

Monthly pension in family protection law complies with parties' status and age and years of marriage and its rate

varies based on the individuals and their statuses. The sentence related to the pension amount does not also stay fixed after it is issued and the court can reduce it or even order its cessation. Pension reduction happens in case that the winning party (the needful applicant)'s income increases and his or her need to and dependency on the pension is lowered and/or quite conversely the defendant (the guilty spouse and in the meantime financially able spouse)'s income is reduced in such a manner that s/he cannot pay the pension as before. Also, the monthly pension might be totally stopped by the court. The monthly pension is cut out when the winning party gets married again or acquires sufficient earnings in a way that she is rendered needless of the pension.

4. DISCUSSION AND CONCLUSION

In the doubtless religion of Islam marriage is of a great and sublime importance and it is a propitious and legitimate issue and the most important objectives of marriage are: creating affection and comfort between the wife and husband and preventing from generation aggregations and promiscuity in the society. The methods of marriage dissolution are divorcement and marriage contract revocation and the main topic of the present study was dealing with the issue of divorcement and the survey of its financial burdens.

Surveying the premise upon which an obligation resulting from the in-marriage contract conditions being of conventional nature is formulated in the format of assets halving, the difference between this condition and the other supportive ones can be distinguished as explicated below:

The following differences can be seen between the condition of transferring up to the half of the assets and equivalent fair:

- a) Imperativeness: paying the equivalent fair for the jobs that a woman performs in her marital life period has been decreed by the law (paragraph (a) of the aforesaid note 6) (paying an equivalent fair based on articles 336 and 337 of civil law (demanding the fulfillment of an obligation) is also allowed). But, accepting such a condition of transferring up to half of the assets is not compulsory for a husband and it is an optional choice and the obligation resulting from it is a conventional one and the assets are transferred to the wife when the husband has been shouldered with a commitment to transfer that means the husband should have accepted the aforementioned condition, or he has to accept it later. Although such a condition is still available in the written format in the current marriage deeds, and it is signed by the husbands, whether knowingly or

unknowingly, as a result of which he becomes bound to implement it in case of divorcement.

- b) Relatedness to wife's responsibilities: equivalent fair is suitably determined according to the jobs a wife performs in her husband's house and she is not canonically responsible to do them; but the obligation of transferring up to half of the assets has nothing to do with the things performed by a wife and even in case that a woman has not done any particular job the court obliges the husband to transfer half of the promised assets.
- c) Relatedness to Assets: Equivalent fair is not associated with the existing assets and it has to be liquidated corresponding to the law, whereas the aforesaid conditions execution depends on the presence of the assets acquired during marriage period.

Apart from the aforesaid differences aspects, there is a commonality seen between these two legal definitions and it is "the husband is sentenced to transfer the assets and pay an equivalent fair when he takes an action to divorce his husband and the wife is not the one claiming for the divorcement and the divorce request should not have been filed for reasons such as the wife's violation of the marital duties.

The following differences in comparison to the condition of transferring up to half of the property and forced endowment can be highlighted:

- a) The condition of transferring up to the half of the assets takes effect as a result of the husband's will and volition whereas paying the forced endowment is a result of the order issued by the law and it is the court's sentence that requires the husband to pay it and it is a compulsory one and using the term 'endowment' here may falsify the content (Safa'ee et al, 2005, 47).
- b) The husband's obligation to transfer up to half of the acquired assets is connected to marital life not the entire assets whereas forced endowment is related to the husband's financial affordability and the assets acquired during the marital life alone has no role.
- c) Obliging the husband to pay a sum under the title of 'forced endowment' is according to the jobs that the wife has performed in her husband's house whereas the husband's being obliged to transfer up to half of the assets arises from his own will and it relies on the principle of autonomy. It should be explained that forced endowment, quite similar to equivalent fair and transferring up to half of the assets, is decreed when the wife does not file a divorcement claim. Furthermore, in the three of these cases it is the court's duty to determine the value.

According to article 1133 of civil law based on the Islamic jurisprudence, the man is in charge of divorcement. The

survey of the statutory rules' historical trend regarding the family is suggestive of such a right being confined in our country's legislative system; for the reasons such as preventing men from misusing such a right. In line with this very perspective, after the Islamic Revolution conditions such as equivalent fair, forced endowment along with the former conditions such as monthly pension as provisioned in article 11 of family protection law enacted in 1974 and palimony in waiting time, were established and they were authorized to have statutory mandates accompanied with parties' in-marriage contract financial conditions all of which are equally complying in Imammiyeh, Hanafi and Shafe'ee religions; the results of which are succinctly dealt with in the following words:

In jurists' ideas, palimony includes all of the normal needs and requirements of the women and the procurement of which by men is a result of the men's authority over the family center as ordered in the law. Iran's civil law identifies palimony in waiting time for the wives in terms of voidable divorcement and for the pregnant wives in irrevocable divorcement.

As for equivalent fair, civil law in article 336 has rendered the applicant's entitlement assumption for equivalent fair dependent on the principle of 'giving is not gifting' but the single article amendment to the regulations pertaining to divorcement enacted in 1992 suggested that the wife's canonically illegal services in the husband's house are assumed as being an act of generosity which incorporated executive problems for women; this is intensified by the canonical duties of a wife in her husband's house not being determined by the legislator and it was most often difficult to prove that it was the husband who ordered the implementation of canonically illegal affairs as well as justifying that the intention behind the performance of such affairs in the family environment being of a non-generous act nature which had resulted in the issuance of numerous and dispersed sentenced. With the approval of the family protection law enacted in 2012, the related note in the aforementioned single article has been revoked and the woman can base her claim for equivalent fair on the same general principle mentioned in article 336 of civil law.

In-marriage contract financial conditions which are of a conventional nature, corresponding to article 1119 of civil law, finds legal effect and mandate in case that the parties agree upon it when signing the marriage contract, therefore the condition of transferring up to half of the assets which has been transformed since 1983 into a printed condition in marriage deeds is nothing more than the wife and the husband's agreement in the format of an in-marriage contract condition, however, such a condition was not customary in Iran's law before the marriage new notebooks being released and becoming popular.

Monthly pension, as put forth in article 11 of former family protection law enacted in 1974, compared to the approval of the other family and women's support statutory provisions, is practically abandoned in the judicial proceedings. But it is for sure verified that the Guardians Council has not announced its canonical illegality and the later statutes have not, as well, revoked it; due to the same reasons, a group of the jurists opine ideas regarding its reinstatement and non-cancellation and know compensation for a loss as its foundation.

In sum, in the present study, cases were enumerated regarding marriage and divorcement, and the two aforementioned cases were investigated at length and the divorcement financial burdens were explicated. It is hoped that the materials and the findings obtained herein can provide solutions to adopting thoughtful strategies regarding preserving the privacy and the sanctity of the family, on the one hand, and bring about the grounding for sublimely advancing the knowledge and awareness of the entire array of the interested readers and the officials in charge in law areas, on the other.

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