

Introducing Marriage Contract in Iranian Legal System According to the Latest Legal Developments

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Abstract

Marriage has always been an important concept due to its association with the essential institution of family throughout history. This importance in the legal system of Islam is doubled due to its emphasis on formation of family. Given the culture of Iranian society and impact of Islam on it, marriage has always been a matter of concern for the legislature. In this regard, the purpose of this article is to introduce marriage in the current Iranian legal system. This is a descriptive-analytic study on the basis of the sources of Islamic law such as the holy Qur'an and its relevant interpretations in order to provide the foundations for the statements and reasoning expressed in this article in the light of books and legal articles written in this field. The most important laws governing marriage in Iranian legal system are: The Civil Code 1928, the Family Protection Act 1967 and its amendment 1975 and the Family Protection Act 2013. These laws provide for two types of permanent and temporary marriage while setting the simple conditions as to get married which are: gender difference, intention and will, capacity and puberty. Although, both men and women must reach puberty and a certain age, in some cases the marriage is permissible with the permission of the father or the paternal grandfather and at the court discretion. Marriage makes obligations to both parties inter alia the man is obliged to pay the dowry and to provide for his wife's living expenses and both parties are obliged to have good company, assistance and loyalty. In terms of legislation, there have been some changes in marriage formation and its legal effects since 1928 up now, most of which are considered as progressive developments of the relevant provisions. Key Points for the Family Court Community:

- *Marriage in Iran is culturally, religiously and socially important.*
- *Most people in Iran are Muslim and Shiite, so marriage rules in Iran have always been in line with Islamic rules. In Iran, non-Muslims marry in accordance with the rules of their religion.*
- *After the revolution, some rules on marriage have changed, but these have not been fundamental. Most of these changes have been made to protect the rights of women and children.*

Keywords: Marriage, women, family law, Islamic law, family

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INTRODUCTION

Marriage has been considered extremely important in Islam [1]. Indeed, Iranian family law follows the Islamic principles and recognizes marriage as an integral part of Iranian culture and tradition [2]. Thus, even before the Islamic revolution of 1979 in Iran, most of the rules of family law were influenced by religion. In 1967, the very first Family Protection Act was enacted to address family rights in Iran. Later, in 1975, an additional amendment to this act was ratified some provisions of which are still in force (id.). In 1979, after the revolution, the legislation was made on the basis of Sharia law. The move led to the partial annulment of the earlier family law [3]. Fast

forward in 2013, the new and most controversial Family Protection Act was enacted despite the massive political and social criticism against it [2]. Opponents believe this act goes against the constitutional rights of people and more importantly weakens the structure of families [4]. Critics believe the divorce process has been facilitated by this act and added restrictions on the detention of a husband in case he fails to pay the dowry. However, this is a doubtful approach. In addition, one of the innovations of this act is that it has dedicated some courts exclusively for family lawsuits. Earlier, some chambers of general courts were determined for such purpose.

This research article aims to provide basic information about family law in Iran by focusing on marriage from a cultural, religious and legal perspective to address some critical issues about it. This article has also outlined the principles and conditions of temporary and permanent marriage and the rights of women under each type of marriage. Furthermore, it examines the difference between the religious and legal age of marriage and the capacity required for marriage. In addition, it describes and lays out the foundation of dowry and alimony and their financial consequences. Lastly, it analyzes dowry from the viewpoint of western countries and portrays the importance of Islamic law and beliefs in formation of Family law in Iran.

DEFINITION OF MARRIAGE

In Islam

The Islamic scholars are not agreed upon the true meaning of the term “Nikah” (marriage). The preponderant and superior opinion among Islamic jurists is that the word “Nikah” in fact means a “legal contract” in essence. The proponents of this view have relied on the holy Qura’n, the Prophet’s precedent, and logic to prove their theory. This group believes that marriage has the stated meaning in the holy Qura’n in all verses (parsa, 2018. P.1). While, the literal translation of Nikah is a “connection”, in legal terms, it can be defined as “an agreement that makes a man and a woman partners and creates a newly united family” [5].

Meanwhile, some legal scholars view Nikah as a relationship that enables a man and a woman to fulfill their sexual desires in a legitimate manner (id.). However, there is a critic on this type of interpretation of Nikah because sexual desire is not an inherent element of Nikah per se. In other words, Nikah can come into effect without having a sexual desire listed as the primary reason for marriage. Therefore, this point of view regarding Nikah should not have any share in the definition of Nikah.

Notwithstanding, some scholars believe if sexual desire -being listed as one of the conditions of marriage is disregarded, the state would be void and would also annul the marriage contract. As a matter of fact, sexual desire is merely one of the main reasons behind marriage, but not the only one. There are some other matters like propagation and more importantly a long, strong, and everlasting relationship, which are more significant. While none of the abovementioned goals themselves alone neither constitute marriage nor are they inherent to the nature of marriage, still a valid and enforceable marriage is possible in their absence.

Although, most scholars view sexual desire as an integral element of the marriage and the reason behind it, the holy Qura’n in verse 21 of Ar-Rum chapter describes the stated term from a distinguished perspective: *“And of His signs is that He created for you from yourselves mates that you may find tranquility with them, and He placed between you affection and mercy. Indeed, in that are signs for people who give thought.”* (The holy Qura’n, verse 21, Ar-Rum.) There are some other verses in the holy Qura’n that indicate the importance of marriage and provide useful guidelines which are crucial in creating a sound family and life.

In Iranian Legislation

There is not any exact definition of marriage in the Civil Code of Iran [6]. A lack of legal definition of marriage has occurred in many other countries such as France (id.). The legislatures may assume it

is unnecessary or it is too simple a concept to need to be defined. In this regard, Iranian legislature did not consider providing a general definition for it due to its legal complexity and vague and sophisticated results [7]. Nevertheless, other Islamic countries like Morocco define it as follows: “Marriage is a legal contract by which a man and a woman mutually consent to unite in a common and enduring conjugal life. Its purpose is fidelity, virtue and the creation of a stable family, under the supervision of both spouses according to the provisions of this Moudawana.” (The Moroccan Personal Status Code, 2004.)

TYPES OF MARRIAGE

Iranian family law recognizes two different types of marriage, permanent and temporary. (Goldfeder, 2017, p. 105.) Due to the resistance of Iranian culture, the importance of the temporary marriage has been undermined by people. However, temporary marriage has been listed as one type of marriage in Iranian and Islamic law (Civil Code of Iran). Thus, there is a need to elaborate this issue further.

History of Temporary Marriage

Temporary marriage is one of the most challenging topics between two main branches of Islam, Sunni, and Shia [8]. Hence, it seems crucial to draw the difference between the Shia’s and Sunni’s [9] approaches regarding acceptance of temporary marriage. Sunnis firmly believe that the Prophet Mohammad (peace be upon him) banned temporary marriage, whereas Shias believe the prophet never abandoned this form of marriage [8]. However, it should be pointed out that temporary marriage was widely practiced during the period of Sunni’s first Khalifa, Abu Bakr and in the early days of Umar’s rule until Umar forbade it [10].

Iranian legislation is based on Shia school and it has been mentioned in the Civil Code of Iran, Article 1075 as “Marriage is called temporary when it is for a limited period of time.” (Civil Code of Iran). Other rules and regulations regarding temporary marriage are also provided in this code which has remained in force ever since [11].

It is also noteworthy that pursuant to Article 20 of the Family Protection Act (2013), registration of permanent marriage is required. According to Article 21 thereof, in order to centralize and maintain family relations, the legal system of the Islamic Republic of Iran supports permanent marriage, which is the basis of family formation. Temporary marriage is also subject to religious law and civil law, and registration is required in the event of the wife becoming pregnant. Also, registration of temporary marriage is required if it is agreed between the man and the woman to register the marriage.

Reason for Temporary Marriage Permit

Temporary marriage is viewed as a pathway to marriage for those who cannot afford to start a new family or accept the responsibilities of permanent marriage. Inevitably, some people must follow this approach towards marriage to address their sexual needs in a legitimate manner. However, temporary marriage should not be assumed as the main principle in marriage because it is a backup plan in case of the nonexistence of permanent marriage possibility. By comparing permanent and temporary marriage in Islamic jurisprudence, it can be stated that Shia is more inclined towards achieving permanent marriage since it is more enduring; whereas temporary marriage is viewed as an alternative or second plan.

Some people are of the opinion that temporary marriage (Nikah Mut’ah) itself has a sinful essence because it addresses sexual purposes [8] whereas with a little attention, it is noticeable that permanent marriage also entails the same purpose behind it. Thus, there is no need to criticize temporary marriage from this point of view due to this fact that there are so many people who may have got married to satisfy their sexual needs legitimately. Therefore, conducting sexual relationships during the temporary marriage cannot be used as leverage to undermine its credibility since continuance of

generation and propagation depends on such desire (Ghods, 1994, p. 645). However, some just view similarities of temporary marriage and prostitution and may have forgot about their essential differences [8]. In other words, taking into account the essential differences as well as the underlying reasons for permission of temporary marriage, immoral sexual relationship and temporary marriage shall not be synthesized. Hence, from a more reasonable point of view, one should consider both the similarities and differences in order to stand on a fair position.

Furthermore, in terms of requisite conditions, almost all conditions for formation permanent marriage are also required for temporary marriage while most legal effects of both types of marriage are the same. Thus, in light of the qualifications of both types of marriage as well as the similarities and differences as mentioned in the following part (id), one can easily and rationally construe that temporary marriage is not even comparable with the concept of prostitution as temporary marriage is indeed a marriage that has temporary duration and as long as the period has not elapsed two parties of marriage are husband and wife and all of legal rights and duties must be applied.

There is another critique with respect to temporary marriage since there may be some people who misuse it because of their endless sexual desires. However, abusing a particular rule of law by people cannot always and does not necessarily provide reasonable grounds to believe that such law is not good. Thus, such approaches that oppose the laws regarding temporary marriage should not be given credibility.

The opponents of temporary marriage may disregard the existing sexual needs of people and does not consider its importance whereas it is crucial to note that disregarding the significance of sexual instinct in the society and not providing an appropriate manner for its satisfaction may result in fatal consequences. To have a sound and healthy society, this important instinct should be adequately addressed. Nowadays, the age of marriage has shifted to late ages, and it is almost impossible to suppress the sexual needs. Therefore, there is room for a rational and reasonable relationship in the streamline of the society.

The Similarities and Differences between Permanent and Temporary Marriages

The differences between permanent and temporary marriages are:

- Failure to set the dowry on temporary marriage cancels the marriage, but in permanent marriage, setting a dowry is not mandatory;
- In temporary marriage, women do not benefit from alimony (unless mutually agreed so) and inheritance;
- Permanent marriage will not be terminated unless by divorce, one of the causes of termination of marriage or death of the parties whereas, temporary marriage does not require divorce or cancellation, and the marriage is terminated by the end of the term, or the termination by the husband;
- As of the end of the marriage, due to divorce or termination of marriage in a permanent marriage, the woman have to wait about three months (Iddah) during which she cannot remarry, but this period is only about 45 days in the temporary marriage;
- Permanent marriage registration is mandatory and temporary marriage registration is optional unless agreed upon by the parties or by pregnancy;

The similarities between permanent and temporary marriages are:

- The requisite conditions and qualifications for establishment of temporary marriage and permanent marriage are the same such as the will, capacity and ... ,
- Children born to temporary marriage have the same rights as children born to permanent marriage including alimony and inheritance, and their parents are obliged to fulfill their rights.
- The legal impedimenta to marriage in both types of marriage are the same;
- It is forbidden to marry a woman in another's temporary marriage, just like a woman who is in a permanent marriage.

MARRIAGE PROPOSAL

According to Persian history, the proposal ceremony is an ancient formal tradition to respect the value of women. The proposal ceremony or “Khastegari” is a very formal meeting for asking for woman’s hand in permanent marriage, which takes place between both families of the potential future bride and groom. The man who proposes is called “Khastegar”, which means someone who want something (i.e. to marry a woman). Based on Iranian culture this is the very first and basic step in the formation of a family.

In the Civil Code of Iran, the definition of proposal ceremony has been outlined in Article 1034 which provides that: “It is lawful to ask for the hand of a woman to whose marriage there is no obstacle” (Civil Code of Iran, Article 1034); however, proposing to a woman that has an obstacle for marriage is not allowed, for instance, a divorced woman who had the revocable divorce whose time grace (Iddah) has yet to be elapsed. To further clarify, it is noteworthy that based on Islamic law there are two types of divorces, which have been mentioned in Iranian family law under article 1143 as follows: “There are two forms of divorce, irrevocable divorce and revocable divorce.” (Civil Code of Iran, Article 1143). In the revocable divorce, the man has the right to return to his wife during the defined time grace (Iddah) equal to three menstrual cycles, and thus this type of divorce does not give permission to the women to accept the proposal that she may have received from the other men during such time grace [12]. Furthermore, according to the Islamic Law Jurisprudence (Fatwa) and Iranian family law, it is not permitted to propose to a woman whose husband has died recently (the time grace for such woman is 4 months, i.e., the widow cannot remarry till 4 months) [13].

Indeed, proposing is a sign of respect for women since it lets her decide about her future life. The question that remains is what if a man proposes to a woman that has an obstacle to get married? It seems this behavior has no remedial legal consequences. Notwithstanding, if a woman gets hurt due to the proposal then in such circumstances under the Civil Liability Act of Iran, she can complain to seek immaterial compensation. (Penal Code of Iran). In addition, in accordance with Article 619 of the Penal Code of Iran which reads: “Anyone who assaults or disturbs children or women in public places or roads, or insults them with outrageous language and behaviors, shall be sentenced to two to six months imprisonment and up to 74 lashes.” (id.), such proposal might be deemed as a criminal act by rare chance if the required elements are in place. However, after removing the barrier of marriage, if feasible, it is possible to get married [14].

ENGAGEMENT

The principle of engagement law in Iranian family law has been lifted from Article 1035 to 1040, which was inspired by chapter 2 of the Civil Code of Switzerland Article 90 to 95, which discusses the requirements for marriage. (id.) However, a later Iranian legislation 1982 repealed articles 1036 and 1039, which contradicted the basic principles of Islam. (Principle 4 of the Constitution of the Islamic Republic of Iran).

In terms of definition, engagement or the promise of marriage is an agreement between two persons to have a marriage in the future. According to the Civil Code of Switzerland, engagement has been interpreted as a contract that either party can breach. (The Swiss Civil Code of December 10, 1907.) Likewise, Article 1035 of the Civil Code of Iran has provided the same connotation. In particular, this provision of Iranian law permits the man or the woman to end the proposed marriage as long as the actual marriage ceremony has not been conducted. (The Civil Code of Iran, 1928, Article 1035) Hence, the law provides a safeguard in this regard that ensures that either party to the proposed union is not forced into the marriage contract.

In this respect, Article 1035 of Iranian Family Law states that “A promise of marriage does not create the matrimonial relation even though the whole or some of the dowry set for payment at the time of marriage between the two parties have been paid.” (The Family Protection Act of Iran, 1967)

The Article goes on to state that “Either the man or the woman, therefore, can, so long as the ceremonial act of marriage has not been pronounced, refuse the marriage and the other party cannot oblige her or him to contract the marriage or claim compensation for losses merely owing to the refusal.” (id.). Thus, this particular provision of Iranian Family Law gives the man or the woman the right to end a proposed marriage provided that the ceremonial act is yet to be executed.

In other words, while marriage is an important contract that has serious effects, the legislature has given both men and woman a chance to withdraw before entering into this contract if they have changed their mind. (id.) Refusing and not entering the matrimonial relationship may seem unacceptable from a moral perspective when both parties had already intended to make such a decision; nevertheless, from a logical point of view both parties had better not enter into a life full of regrets and misery. Therefore, neither party can pursue a legal action if the other side decides not to proceed with marriage and a mere refusal is not sufficient to ask for compensation of damage, loss or harm. (id.) However, if either party were at fault for breaking engagement, he/she may be found liable for loss of money and/or mental distress i.e. material and/or immaterial compensation in accordance with Article 1 of the Civil Liability Act of Iran [15].

Article 1037 of the Civil Code of Iran, on the other hand, talks about what the involved parties can do in the event that a proposed marriage is canceled as indicated in Article 1035. In this regards, Article 1037 provides that “Every one of the betrothed parties can, if the proposed marriage is canceled, claim the restitution of the presents given to the other party or to the parents for the marriage in question.” (id.) In the event that the presents “do not exist in original, the claimant is entitled to ask for their value of the presents which are ordinarily preserved unless the same presents have been destroyed without any fault of the party who was in their possession.” (id.) Thus, the involved parties should be ready to comply with the provisions of Article 1037 before deciding to cancel the engagement.

MARRIAGE CONDITIONS

Marriage has conditions in order to establish, the main of which are gender difference, intention and will, and capacity. Each of these will be briefly elaborated as hereunder.

Gender Difference

Marriage between two homosexuals cannot be acknowledged under Islamic as well as Iranian laws. This is one of the legal axioms. Although there seems to be no need for argument, in its affirmation one can rely on Islamic law and the customary rules and practice. Marriage between homosexuals is against public order and ethics and therefore it is void. In this regard, Articles 1035, 1059, 1067, 1122 and 1124 of the Civil Code of Iran also indicate the possibility of marriage only between men and women.

Gender difference is required both at the beginning of the marriage and afterwards. So, if one of the couples turns into a man or woman as a result of the sex change, the marriage will be canceled [16].

Will

Due to the fact that marriage is a contract in substance, the will is the most important element for its formation, as in other contracts. Marriage without will is void. Therefore, marriage is void in the state of drunkenness or joking, for lack of intention. In this respect, Article 1062 of the Civil Code of Iran provides that “Marriage takes place by proposal and acceptance in words which explicitly convey the intention of marriage.” In the same line, Article 1064 of the mentioned Code also states that “the person who performs the act must be sane in mind, and of legal age, and capable of forming a decision.” This article applies either to one who marries for himself or to another. Hence, if the will is defective due to reluctance, the contract is void [17].

Capacity for Marriage

In the Civil Code of Iran, like in Islamic Jurisprudence, in addition to puberty, the maturity is necessary in order to have capacity for carrying out transaction. The age of puberty is defined in the law; however, there is no specific age of maturity. Before the revolution in Iran, Article 1210 of the Civil Code had determined the age of 18 as a criterion for maturity. After the revolution, this provision changed under the pretext of conformity of the Civil Code with Islamic law. Hence, the current text of this provision indicates the age of puberty as maturity. However, according to note 2 of the mentioned article, only if the maturity of a minor who has reached the puberty age (i.e. the full legal capacity) is proved, it is possible to give him/her the properties which had belonged to him/her [18].

From another perspective, it may be argued that the above-mentioned provision is the general rule applicable to transactions, but with respect to marriage, being a specific contract with distinguished consequences, the general rules shall not be strictly applied. Accordingly, although as a general rule, both men and women must reach puberty and be of a certain age for conducting marriage, in some particular cases the marriage may take place with the permission of the father or the paternal grandfather if the man or the woman is under the set age. Therefore, the following criteria need to be further discussed hereunder.

Age of Puberty

Puberty literally means “reaching something,” and in the religious framework, it means reaching an age that sexual instinct appears in both men and women and reproduction becomes possible. According to Islamic provisions, the age of puberty for girls is nine years old and fifteen for boys [19]. In fact, Islam religion views puberty as a natural and physiological phenomenon whose timing may differ from one person to another. However, getting to the age of puberty should not be considered as the sufficient reason to marry a woman. Some additional factors play a more critical role in the determination of a woman’s fate with regards to marriage.

Age of Marriage

One other main issue of misunderstanding about Islam religion is that most people wrongly believe that Islam has permitted child marriage whereas it is notable that the holy Qura’n has not mentioned or specified any legal age of marriage.

The current laws and practices show that the history of the marriage age has evolved and changed throughout the years. In this regard, Article 1041 of the Civil Code of Iran has previously provided the marriage age by stating that female marriage before the age of 15 years and male marriage before the age of 18 years is forbidden. In certain cases, albeit the court may grant an exception. However, girls under 13 and boys under 15 are not allowed to marry any way. Subsequently, in the Family Protection Act 1967, the minimum age of marriage was increased to 15 for women and 18 for men. (The Family Protection Act of Iran, 1967) Once again, in the amendment of 1975, the minimum age of marriage was raised to 18 for women and 20 for men [20]. Nevertheless, the latter article was subject to criticism for not adapting to social and geographical circumstances, custom and tradition of the people since according to statistics available in Iran, especially in rural areas, girls are married at an early age. As a result, the respective provision was abolished after the revolution [16].

Eventually, having been subject to several amendments since the revolution, Article 1041 of the Civil Code of Iran has been enacted in a manner which provides that marriage under the age of 13 for girls and 15 for boys, subject to the permission of the guardian taking into consideration the ward’s interest and at the discretion of the competent court is permissible (Amendment 2002).

Although in practice, few marriages may occur at this age, since there is a possibility that someone may take advantage of children in these types of marriages, family courts have to act in a very

cautious manner and review the overall conditions and circumstances of the child including his/her the economic, social and educational status, for instance, if the marriage does not permit the child to continue his or her studies, it is unlikely that the court issues the permit. On the other hand, these types of decisions by the relevant courts can help to advance the overall situation of family law in Iran [21].

Father's Permission on the Girl's Marriage

It is important to point out that under Iranian family law a virgin woman must get her father's permission for marriage. In this respect, Article 1043 of the mentioned Code provides: "The marriage of a girl who has not previously married is dependent on the permission of her father or her paternal grandfather even if she has reached the full age of puberty" (Id.)

One may wonder why a sound mature virgin woman needs her father's permission to get married as it she does not have independence and capacity to decide for herself. The answer to this valid argument should be provided from a cultural perspective; in fact this provision would make sense and have its rationale, if one considers the legislature's concern to reserve the right for the father to protect his daughter, which may sound like a double protection for the virgin woman of the society [12]. In other words, the legislature presumed capacity for a mature virgin woman and her father's permission to her marriage merely acts as protection per se for her. (id.) Furthermore, this does not necessarily have anything to do with them being immature, rather the legislature has considered the final word to be made by the father as the guardian to assess what would be in the best interest of the virgin woman.

Notwithstanding, the legislature has provided an alternative route for the virgin woman in case her father or paternal grandfather withholds his consent and permission to her daughter's marriage to a particular man without a justifiable reason as follow: "If, however, the father or the paternal grandfather withhold the permission without justifiable reason, the virgin woman can refer to the Special Civil Court [Family Court] giving full particulars of the man whom she wants to marry and also the terms of the marriage and the dowry money agreed upon and notify her father or her paternal grandfather through that Court of the foregoing particulars. The Court can issue a permit for marriage..." (The Civil Code of Iran, Article 1043).

Therefore, if the father or paternal grandfather unjustly opposes the marriage of the girl due to reasons such as personal hatred towards the girl's favorite man, not to be in possession of a home or car, lack of bachelor or doctorate university degree, etc., his right of permission would be rendered legally void and it would be replaced with the court's permission; but, if the opposition of the father or the paternal grandfather is due to reasonable grounds such as corruption, inappropriate conduct, unemployment or the addiction of the man to gambling or alcohol and the like, such reasons must be deemed justified [16].

In addition, the law does not stop there when it comes to the issue of permission from the father or the grandfather by providing that "If the father or the paternal grandfather are not present in the place and obtaining their permission is customarily impossible and the girl is in need of marriage, she can marry." (The Civil Code of Iran, Article 1044) However, the registration of such marriage in the Marriage Registry will depend on proving that it is not possible for the girl to obtain permission from the father or the parental grandfather before the competent court (The Civil Code of Iran, Note to Article 1044).

THE EFFECTS OF MARRIAGE

The legal effects of marriage are divided into two parts: financial and non-financial rights and obligations. As marriage is primarily a non-financial contract, the personal relationships of the couples carry more importance than financial ties therein. So, first we shall look at personal relationships and then we would deal with the financial effects of marriage.

Non-financial Effects

Married couples are committed with the following non-financial obligations: good association, assistance, and loyalty which are briefly elaborated below.

Good Association

Good association is one of the common tasks of the couple. In this respect, Article 1103 of the Civil Code of Iran, states that the husband and wife are bound to treat each other as good companions. This means that the couple should live in happiness, peace and intimacy and respect each other. They must avoid quarrels and insults.

Assistance

The Couple should help each other in family rearing and parenting. Indeed, it is common for the couple to help each other the framework of which is determined by the time and place requirements. For instance, depending on the time and place conditions, doing the shopping may be the responsibility of the man or the woman, or the woman may be responsible for managing the home affairs [22]. In this regards, Article 1104 of the Civil Code of Iran states “Husband and wife must co-operate with each other for the welfare of their family and the education of their children”.

Loyalty

The couple must be loyal to each other, that is to say, they must refrain from illegitimate affairs. This obligation is not explicitly stated in Iranian law but is understood from the spirit of family concept as well as the set of legal and penal rules concerning the punishment of illicit relations.

Financial Effects

By forming a marriage, some financial rights and obligations would come into play and need to be evaluated from a legal perspective, for example, dowry and alimony which must be paid by the husband to wife after initiation of marriage.

Financial Independence of a Married Women

In Iranian law, the property of man and woman does not constitute a common property in the sense that each spouse has his/her own property. Thus, the woman is financially independent. She can do whatever she wants with her property. Article 1118 of the Civil Code of Iran in this respect provides: “The wife can independently do what she likes with her own property”. In addition, if the wife does extra work at home, such as cooking, cleaning, etc., she can ask her husband to remunerate as these are not considered as her duties. In fact, one of the developments that took place after the revolution in women’s rights was the possibility of claiming a wage for work done by a woman at her husband’s house. Note to Article 336 of the Civil Code was added in year 2002 which provides for this possibility [23].

Dowry

Dowry (marriage portion) or Mahr is defined as “the property given by the husband to indicate his willingness to contract marriage, to establish a family, and to lay the foundations for affection and companionship” [24].

From a legal standpoint, Mahr is considered as a separate condition and clause under the marriage contract. Mahr’s validity is a distinct issue from the validity of marriage contract [25]. Iranian legislature did not provide a specific definition for Dowry. Instead, under Article 1078 of the Civil Code, provides a vague and general definition of it as follows: “Anything which can be called the property, and which can be owned and possessed can be designated as a marriage portion.” (The Civil Code of Iran, Article 1078) [6].

Thus, Mahr must have a monetary value, which means the value of it could be transferred to cash in the market [26]. i.e. something that a sound mind assumes a value for it and is ready to pay some

money for it, for instance, gold coins but not the wing of a rare insect in Amazon jungle since the rare insect is not something that can be converted to monetary value instantly, and typically, people do not assume a monetary value for it even if it has lots of value. It happens sometimes that men list something irrational and with no monetary value as Mahr of their wife. Such kinds of Mahr are in fact void and null, but this has nothing to do with the validity of marriage contract itself and does not make the marriage void. It is also imperative to state that Mahr is a religious duty and obligation that has been addressed in the Sharia law and required by the holy Qura'n [27]. However, interpretation and payment methods of Mahr may differ based on the custom and usage of each Muslim country [28].

From a historical point of view, dowry also existed during the pre-Islam era but not in the same manner. Rather, the dowry was kept by the father of the virgin woman. There were a lot of negative perceptions about dowries and most understood it as a way that fathers can sell their daughters by accepting something in return [20]. However, after Islam, this concept changed essentially, for instance after the marriage, the dowry belongs to the woman, and it is treated as her personal property. Further, women can ask to have their dowry at any time during the marriage, and this has nothing to do with divorce. This is a mere respect to the value and recognition of women and their importance in the matrimonial relationship. (id.) However, there have been cases where women have misused this system. Even nowadays it may happen that a woman forms a fake marriage and asks for her dowry as soon as she gets married. From a legal point of view, although dowry is a powerful lever that is available to women, misusing a right by some groups of people should not negate the credibility and validity of that right.

According to a study in 2008 by the National Population Studies and Comprehensive Management Institute of Iran, of more than 1200 married couples aged 18 to 40 in twelve different provinces the average value of women's Mahr were 350 gold coins (each gold coin amounted to 350 USD then). (id.) However, the price of the gold may change based on the value of market; still allocating gold coins as dowry is very typical in Iran. This study revealed a huge increase in Mahr from 2001 to 2011, in which during a five-year period the average jumped from 300 to 450 gold coins [29]. Nevertheless, it is noteworthy that according to Islamic precedent, women are advised to avoid high value dowry since it is considered in essence as a gift provided by the man as the token of his affection towards his wife.

While, according to the law and religion, it is men's obligation and duty to provide the exact item that has been listed as dowry or its monetary equivalence, in 2013, Iranian legislature intervened and set a certain new rule in the Family Protection Act about the method of dowry payment in the sense that dowries that are listed less than 110 gold coins, would be viewed by the judicial systems as a criminal liability which means men may be imprisoned for not providing it in the event of solvency [30]. Anything more than 110 gold coins is viewed as a civil liability, thus if a man provides 110 gold coins of the dowry, he will not face imprisonment. However, the man will still have a civil obligation to pay it off. It is important to note that the issue of solvency and insolvency would come into play at the time of demanding the dowry. A solvent man will face imprisonment if he decides not to pay the dowry. However, if a man is considered insolvent, he has to pay the dowry as installment payments. Therefore, this quite recent Act tried to put a limitation on the dowry payment to prevent misuse of such law.

In the light of the above, it is worth mentioning that Iran's Supreme Court in its Unified Practice Decision No. 722 in January 2012, declared and ordered family courts to accept the insolvency from men and resume the process of seizing the property. However, after implementation of the mentioned order, there are still some routes to bypass the law because men can hide their property or transfer the titles to others [20].

Nowadays, due to increasing immigration, most western countries' courts must hear some cases in which there is a dispute over the concept of dowry. Besides, the courts have been called upon to use

their understanding of the Islamic law to determine essential cases in their respective jurisdictions. (*Odatalla v. Odatalla*, Docket No. FM-16-366-01 (Ch. Div. June 24, 2002) for instance, in 2017, the Supreme Court of Sweden had to decide on a matter involving 690 gold coins listed as a dowry. (Supreme Court of Sweden, 29 March 2017) The court interpreted dowry as a mechanism to balance the financial rights of couples. Furthermore, the court determined dowry as part of the contract of the division of property in the future. It reasoned, “A property-sharing agreement that is set up without the connection with an imminent marriage annulment is null and void under family law.” (Id.) Hence, from Swedish judicial system point of view, such a contract neither exists nor applies under Sweden family law.

Furthermore, cases involving Islamic dowry are not a new topic in the United States courts [25]. There have been disputes over dowries in many jurisdictions, and decisions varied from state to state. (id.) per history, in most cases Mahr was wrongly construed as an Islamic prenuptial agreement, and whether the court enforced, it was considered the central issue of the case. While addressing the problem, the court can consider other factual circumstances in understanding Mahr. (id.) Also, the court can pay attention to the leading factors of the Mahr agreement. Since Mahr is a critical element of the Islamic marriage, it can be viewed as an indicator that the relationship in question is valid in the view of the Islamic laws (id.).

In *Odatalla v. Odatalla*, for instance, the New Jersey court examined the issue of marriage from the context of Islamic law to make a decision. (*Odatalla v. Odatalla*, supra) Part of the decision in *Odatalla v. Odatalla* case reads: “Agreement was not void simply because it was entered into during an Islamic ceremony of marriage, and the agreement was contracted between two consenting adults, which did not contravene statute or interests of society.” (id.) Therefore, the court concluded that Mahr is nothing more and nothing less than a simple contract and it should be viewed as a simple, enforceable contract if the requirement of forming a valid contract has been followed. (id.). The issue is that the most U.S. courts were not able to correctly correlate the exact legal concept in American jurisprudence to define Mahr [31]. Thus, they understand it as a prenuptial agreement [25], whereas a prenuptial agreement is an agreement between prospective spouses made in contemplation of marriage, which becomes effective upon marriage. Thus, so far, such misconception has resulted in many contradictory case laws. (*Odatalla v. Odatalla*, supra).

Alimony

The Civil Code of Iran defines alimony under article 1107 and itemized it in details as Cost of maintenance includes dwelling, clothing, food, furniture in proportion to the situation of the wife, on a reasonable basis, and provision of a servant if the wife is accustomed to having servants or if she needs one because of illness or defects of limbs [32].

In this respect, based on Article 1111 of the same Code, the wife can refer to the court if her husband refuses to provide for maintenance. In such a case the court will fix the amount and will compel the husband to pay it. According to Articles 1112 and 1129 therein, if the husband fails to pay alimony and it is not feasible to compel him to do so, the wife can apply for a divorce. Furthermore, under Article 642 of the Islamic Penal Code, anyone who deprived his wife of alimony shall serve a sentence of three months and one day to five months in prison.

CONCLUSION

The current article is aimed to examine the family law in Iran with focus on the legal, cultural, and religious perspectives of the concept of marriage. Most of the regulations on marriage and its effects have been enacted in the Civil Code 1928 of Iran. Some provisions are also enshrined in the Family Protection Acts 1967, 1975 and 2013. There are two types of temporary and permanent marriages in Iranian law. The relevant family laws recognize temporary marriages and view it as a union for people who for the time being cannot afford to have a new family or accept the responsibilities that are associated with a permanent marriage.

In terms of requisite conditions for formation, both types of marriage require *inter alia* will, capacity, and gender difference of the parties. Further, the parties of marriage contract need to be wise and mature while girls should be at least 13 years old and boys at least 15 years old. Marriage under this age requires the court as well as the guardian's permissions.

The parties of marriage are committed to fulfill some obligations rising out of marriage. These obligations can be divided into two categories: financial and non-financial. Non-financial obligations include good association, assistance and cooperation, as well as loyalty. Non-financial obligations consist of the payment of alimony and dowry by the husband. The woman is financially independent and can do with her property what she wishes.

In general, the regulations on marriage formation and its effects have not significantly changed since 1928. Major changes include the requirement to register temporary marriages in some cases, criminal penalty for failure to pay dowry and alimony, the possibility of claiming wage for work performed by the wife at her husband's home and determining the minimum age of marriage. Most of these changes can be analyzed as positive developments in the way of realization of women's rights as well as family consolidation.

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