



## The Study of the financial effects of divorce on Iran's Law

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**ABSTRACT**

Cancellation of contract primarily causes the loss of all relations arising from it, but in the case of married couples, the financial relations continue in cases even after the cancellation. This article evaluates the financial impact of divorce in Iranian law with library method. Of the Law Concerning divorce reform enacted in 1992, it obliges the man who is seeking a divorce to pay financial rights of women included the wages, Nahla, and up to half of the assets, inheritance, alimony and mahr and dowry. Nahla is establishing rights that were entered Iranian law by the law amending the provisions of the divorce. However, in accordance with Article (336) of the Civil Code, nothing is unpaid, but obligation of man to pay the works of women at home is subject to conditions in the year 1992. In the absence of financial condition during the marriage, the wage should be calculated based on the work that women do at home of the husband.

**Keyword:**

divorce, financial effects, wage, Nahla and half of the assets, alimony, dowry extradition, rights in Iran

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## INTRODUCTION

Family law is strictly based on respect for social welfare and unlike other contracts and transactions; the community considers itself to contribute the sustainability of marriage. Therefore, the legislature is sensitive to family collapse and does not accept its cancellation with very few exceptions. Article 1120 of the Civil Code, in the ways of cancellation marriage, stipulates, "Marriage will be cancelled with termination or divorce or the contract period in temporary marriage" (Katuzian, 2008, vol. 1, p. 102). After the cancellation of the marriage, important questions will be created in terms of jurisprudence and legal terms, including whether with the cancellation of marriage, the couple relationship finish. If it continues, how will this relationship? Cancellation of the marriage, for any reason that is done has effects that some are financial and some non-financial. Unlike other contracts, in the marriage contract, the parties or one of them cannot consider a termination right for himself. In other words, the marriage contract is necessary and expedient and necessary continuity, durability, and stability of the family due to this. However, the legislator avoids losses for wives, who are at risk of defects caused to terminate the contract, has determined in definite cases of termination of marriage, that this case is confined to the cases specified by law. Beyond, the effect of divorce as the most common cause of cancellation the marriage on the financial situation of divorced women in today's society has a considerable position. Equal to Iranian law, whenever a man wants, can divorce his wife, but this regulation will bring insecurity in the family that the legislator has set conditions to limit the rights. In the present article, the financial impact of divorce on Iran's rights has been discussed.

### 2. The concept of divorce

In the Dictionary of amid, the divorce is defined as the divorce means the separation of the woman from her husband, the woman will be released from the shackles of marriage (Amid, 2008, p. 845). In Islamic jurisprudence, divorce is defined as a divorce is undermining the word of marriage with special words. (Najafi, 1983, p. 384) Legally, divorce is the ritual whereby a man liberates a woman who is married with him permanently with the permission or a court order (Katuzian, 1992, p. 300). The permanent marriage in the definition is that in accordance with Article 1139 of the Civil Code, divorce is for permanent marriage and the separation of woman in temporary marriage, the period expiration of marriage or its munificence is from the husband's side.

### 3. Financial effects of divorce in Iranian law

The financial effects of divorce on Iran rights lead to a few cases. Including what is considered part of the division and divorce effects in divorce process are monthly pension, fees and other cases that we described as below.

#### 3.1. Monthly Pension

The word pension literally means wages and task (Jafari Langroodi, 1998, p. 165) and the word monthly means the amount that should be paid every month.

The term monthly pension is a term that was stated in Iran's rights, for the first time, in Article 11 of the Family Protection Law, passed in 1974 that creates a supportive

institutions emerging in favor of the family and especially the weaker side, which means the woman, in terms of economics.

Article 11 of the Family Protection Law, approved in 1974, and provides: "The court may condemn paying a monthly fee that fits the other party according to the conditions and parties' age and duration of marriage, and at the request of either party, if the certificate of no compromise is based on the misconduct and malpractice of another party. In addition, if the applicant's need of money and the ability of the other party to pay the fees will clear.

In the case that an impossibility of compromise certificate has been issued to the directions contained in paragraphs 5 and 6 of the Family Protection Law, approved in 1974 in Iran, monthly pension will be awarded to the sick or insane compliance with the terms. This is under the condition that the disease or dementia happens after marriage, and it will be stopped by the court order if the restoration of health happens (Katuzian, 2003, p. 475).

According to the article, on the conditions for issuing the pension sentence and its features, it can be said that the impossibility of compromise certificate should be issued with the request of one of the couples.

The impossibility of compromise certificate is due to the fault of one couple. About the concept of fault, the articles 951 to 953 BC on Iran should be considered. Incurable disease or dementia of the wife should be created after marriage, according to paragraphs five and six of Article 8 Q.h.kh.

Due to the nature of pension, examples of which cannot be developed, therefore, with the death of sentenced; the pension will be stopped, although, in this case, there is also the opposite view (Katuzian, 2003, p. 484).

Regarding the deal with financial claims, which is expressed in the law, it must be said: Article 4 of the Family Protection Act, which has considered death with family disputes, such as dowry, alimony, Mahr, in the jurisdiction of the family court, the dispute resolution Council, has no jurisdiction over these matters. Documenting this discussion is a consultation theory that says:

"Handling financial disputes in Article 4 of the Law of Family Protection Act of 19/Feb/2013, including extradition proceedings of dowry, alimony and dowry demands are the subject of inquiries within the jurisdiction of the Family Court. The dispute Resolution Council does not have jurisdiction to resolve the dispute even though, in financial terms, it is within the limits of Dispute Resolution Council jurisdiction." However, The Council can act in family proceedings that are civil proceedings, if the parties consent, for peace and reconciliation and send the results, for issuing report corrections, to the family court (Bazgir, 2013, p. 189).

Monthly pension, essentially, is considered a type of alimony, because, it is redeemable both in the case that divorce is due to the one of the parties' fault, and in the case of divorce, based on disease or dementia. If, however, it has the compensation aspect, it can be claimed just about the fault of one couple. In fact, the damage is proportional to the harm that is compiled, but monthly pension is proportional to other criteria, which is foreseen in Article 11. In compensation, the disability to pay fees to the plaintiff and

the defendant is not a requirement. However, in a kind of alimony, which means the alimony of relatives, it would be a condition and reducing or eliminating monthly pension is more consistent with the nature of alimony, but this type of alimony is redeemable in any divorce both irrevocable and revocable. In fact, this type of alimony depends on the wife's alimony laws, not alimony of relatives and it is a new special type of alimony, which is ruled by special rules. This type of alimony should not be mistaken with alimony of Edda days, because these provisions are not related to Edda days and it cannot be retractable with the alimony of Edda days, because the women received alimony and could afford funds, and she cannot receive a monthly pension (Safai and imami, 2002, p. 257).

The fundamental difference between this institution, with institutions such as, the wage during marriage and Nahle fees, which have been forecasted in paragraphs (a) and (b) of a single article amend the provisions relating to divorce, has been obvious to everyone. Firstly, both these institutions are solely for the benefit of women, while, as mentioned, a monthly pension can flow for the benefit of couples. Nahle also arises where the wage does not belong to the women and money will be paid to the woman as a gift and a mandatory donation. As it is clear, the foundation of these two institutions is completely different from the monthly pension institution and in monthly pension, no attention is given to the woman's task at husband's house and donations intended or otherwise and demand of man is not controversial. This basic difference can be used to reject claims of those who believe, single Act amending Regulation relating to divorce that was passed before the family protection Act is abrogating the law. Because, when the base of these institutions has significantly differentiated, there is no reason to abrogate a monthly pension and Article 11 Q.h.kh, remains in force.

### **3.2. Stipulation of split-half possessions**

Although the Iranian Civil Code has not considered the split-half assets, independence in the form of financial effects of divorce for couples, but it must be acknowledged that by the study of law, only married couples and the wife can use this right when this condition is given during the marriage. In the following, we evaluate the nature of the condition precisely.

#### **3.2.1 The condition of split-half possessions**

According to Article 1119 of the Iran Civil Code, the parties to the marriage can mention any condition that is not averse to the marriage requirements during marriage. For example, a condition that if the man has another wife or will be absent within a certain time, or does not pay fees, or attempts against the life of the woman or ill-treated, that their life together will become intolerable. Alternatively, the woman will be a lawyer and attorney substitution, which after proving the fulfillment of a condition, divorce herself in court with the final verdict.

#### **3.2.2 Realization conditions for the split-half possessions**

Since, the condition for split-half possessions in the marriage contract is subjected to restrictions that, after the couple agreed to insert it during the marriage or outside it, wife is entitled to the condition only if they happen, therefore, we explain them below. For the realization of the wife's right to property of the husband, the divorce should be happened from the man's side. Therefore, if the wife, for any reason, such as hardship, Article 1130 of the Civil Law

in Iran, or even refusing to pay alimony of 1129 BC Iran, or divorce, due to the absence of the husband in 1029 BC Iran, she asks for the divorce, though, it is with legal authorization, the condition of split-half, will not be achieved. The wife should not ask for the divorce, such that, if, misconduct and ethical problem of the wife made the husband to ask for the divorce, split-half condition cannot be realized.

Another point is that, the transfer of assets of half condition, frankly, did not refer to the transfer of property of the husband, but the conditions, provisions suggest that, the court issues a certificate of non-adaptation and should determine in this regard.

Paragraph A in wedding contract is criticized as below on setting the transmission condition to half of the assets:

The first condition: divorce should not be at the request of the wife

The second condition: divorce should not be due to the women's fault in the duties of a wife or abusive behavior

The third condition: to half of the husband's asset; here, the maximum funding that man must pay the woman, should be specified with up to half of the assets sentence, but no rate is specified for a minimum.

The fourth condition: polygamy; another issue that should be considered in this condition is the issue of polygamy. This means that if a man has two wives and wants to divorce one of them, if his wife has the conditions set forth in this paragraph and according to the law, half of the property belongs to her, a major right of another wife, who may have a share in the collection of man's wealth, will be lost. One of the shortcomings of this condition is ignoring the rights of another wife of man, if he has two or more wives.

### **3.3. Wages for the wife's tasks during marriage**

Wages and Nahle are including financial rights of the wife, after the divorce. Legislature, in numerous laws, is trying to explain the rights and mutual relations between couples and one of the rights belonging to the wife is wages for tasks that she has made during marriage at the husband's home.

In fact, the legislator gives respect to the practice of wife, and in general, rules of the need to pay wages for task with remuneration, in Article 336 BC Iran "if anyone, in terms of the other, does something that traditionally, there would be a reward for that. Alternatively, that person normally will be prepared to act, the agent will be entitled to fees for her actions, and unless it appears that she meant donations."

Civil law has discussed about a wife's wage in Clause 6 of the Law concerning regulatory reform relating to divorce, adopted Nov 1992 by the Expediency Council, specifically. Other rights are Nahle, as well as indicating the condition of split-half possessions in the marriage document (Hedayat Nia, 2006, p. 135).

"Note 6 of single article states that, after divorce, on request of the wife, to charge fees for things that are not legally responsible for her, the court, primarily, takes action through peacefully to provide the wife's demand. In case of impossibility for peaceful action, if during the marriage contract or contract out the necessary, there will be a condition for finance, it will be taken action according to which. Otherwise, if the divorce is not at the request of the wife, as well as the divorce has not been due to the abuse of women in the responsibility of a wife or her immorality and misbehaves; it will be acted as follows. If the wife has done

works that legally, were not her responsibility with the command of the husband or with no intention of donations, and it is proved in court, the court calculates the works that were carried out and commands to pay fees."

"Note 3- running divorce and its record in office is subjected to the payment of legal rights of the woman (such as Mahr, alimony, dowry and otherwise), in cash, except in Khala or Mubarat divorce (at what was given) or consent of the wife of issues a final judgment of husband's insolvency for the payment of the aforementioned right. "

With this interpretation of the wage, it should be said that wages is against Almosama wage, which means that, if a wage is determined for a task, it is Almosama wage. If there will be no wage determined to action, by referring to the traditions, the value of the task will be determined and paid. In fact, practically wage will be estimated similar to conducted the task, and will be determined for action (Katuzian, 2003, p. 223). One of the principles that lawyers have raised for Note six of a single article, which means the wage during the marriage, is citing the issue of vindication mentioned in article 336 BC Iran.

Article 336 BC Iran, provides that "when a person does something for another, that traditionally, there will be a reward for that action or that person, normally, will be prepared to act, the agent will be entitled to fees for her work, unless, it turns out that, she wanted to donate. "

According to Clause 6 of the Law Concerning the reform of the divorce law, passed in 1992, with some conditions, wages of marriage can be asked of the wife. That is, in this case, wages will belong to the woman: asking divorce from the couple's side, no divorce from wife's fault in the duties or abuse of ethics and behavior; the impossibility of compromise; divorce.

In Note 6 of a single article, one of the conditions of wage payment to the woman is considered no misbehave and a lack of violation of the duties from wife, however, instances are not specified, but according to the norms and principles of jurisprudence and law, some instances can be:

Theft of husband's property, obscenities and irreverent to the husband, having an illegitimate relationship, leaving the house without permission, using drugs or alcohol, illegal employment, careers, employment in jobs that are incompatible with the right of husbands, employment in jobs that are incompatible with family and the husband social prestige

Criminal prosecution and beating husband by wife can be considered in any form as moral abuse. However, the wife's duties include obedience, good relationship (that is the task of the parties) and cooperation to intensify family foundations (which it is a joint responsibility of married couples.) These tasks are typically raised in legal articles (Safai and Imami, 2002, p. 284).

### **3.4. Financial of children**

Funding for the child that is in the family unwantedly, a family that the parties have separated, is very important because children have material needs in addition to the emotional and spiritual needs as well.

After revocable divorce, alimony of a wife and children is the husband's responsibility. Of course, in the waiting period, the duty to pay alimony of wife disappears, but the maintenance of the child fee still must be paid. The duty to

pay child support remains after divorce, until the death or disability of the father.

In case of the financial needs of the child does not face the problem, the legislator moves beyond and stresses that, if the father dies, or is unable to pay alimony, the task does not disappear and his paternal grandfather and in case of his absence or lack of financial ability, his mother has the duty to pay childcare fees. Even assuming that the mother is not alive or does not have the necessary financial capability is intended and in such a situation, grandfather and grandmother are responsible for this task.

From the appearance of the article, it turns out that according to legislate, mother is first of paternal relatives in paying alimony of children, (except grandfather) and in some cases, this verdict is consistent with common sense and fairness. Because, when the mother has the ability to manage the livelihoods of children, it is unfair to give this task to paternal relatives.

In order, the child does not face problem in funding, there are criminal sanctions about the need for financial support from him and paying for his life. According to Article 642 of the Penal Code, the parent who must pay child support, but refrains from doing so, can be sued.

### **Conclusion**

According to Article 1133, Civil Code of Iran, which is based on Islamic law, if a man wishes, he can divorce his permanent wife. The legislator has considered measures, on the restriction of the article, limiting the rights of man and protection of the woman's right, whose husband wants to divorce her. On the other hand, the implementation of the right to divorce, has confined the man to ritual, including refer to a competent court and get a certificate of non-adaptation, and on the other hand, it considered right for women, that is when her husband wants to divorce, he is obliged to perform it. Some of these rights are mandatory aspect, that are reckoned in the relevant provisions of the Divorce Reform Act, passed in 1992, and they include, dowry payment, based on indicators of inflation, Nahle and wages and alimony of Edda days. Some other aspects are not mandatory and, they are required if they were agreed as a condition of marriage with the couples, such as the condition of assets split-half, that the wife earned during the marriage. This requirement is the proposed provisions that the Supreme Judicial Council has included it within guideline numbers 1/34823 and 1/31823, respectively, in the years 1982 and 1983 in the marriage contract and if the couples agreed on it, if the husband wants to divorce, he is obliged to transfer half of his assets to the wife.

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