



## Legal Status of the Couple's Property before and after Divorce in Iranian Law

*Dr. Imanpour Ali, PhD in Private Law*

*Iman507@gmail.com*

*Leila Forouzan Far, Graduated in private law from Allameh Mohaddes Noor University*

*frozanfar2@yahoo.com*

### **ABSTRACT**

The family financial system is a set of rules that determine the financial and economic relationship of a woman to a man in the family and in this paper, we want to consider what our property systems may be based on the independence of couples, which may be shared by men and women. In the case of couple property, various financial regimes are envisaged in the legal systems of the world, including total asset sharing, relative asset sharing and complete property differentiation. In Islam, the couple's property is independent of each other. The principle of property independence is the basis of the couple's financial relations, which is in line with the principle of non-guardianship. In addition, in some verses and hadiths, the independent ownership of each man and woman is deduced from personal property and income. Following Iranian law, Imamieh jurisprudence refers to the principle of financial independence of couples in the ownership, administration, and management of their property. The importance of the transaction and the importance of other financial rights in any of our laws do not depend on being a man, and it is clear that men and women are no different in obtaining property and concluding contracts. But in the following, we will consider the topic of these property that may be shared between the spouses, as well as the clauses that create the property sharing for the spouses as the case may be, and the legal nature of the divestiture of the spouses is discussed as well.

### **Keyword:**

Couples Property, Financial Rights, Couples Financial Share, Asset Split

**Introduction**

By creating a valid marriage contract with all valid religious and legal conditions between a man and a woman, rights and duties are created between the couple, the observance of which has a fundamental effect on the stability and strength of the family system, which is called the "effects of marriage". Part of these rights and duties are related to financial affairs and the other part is related to non-financial affairs and security and prestige protections [1].

In Islamic law, there are differences regarding the division of duties of couples, which not only do not have the origin of discrimination, but also in the legislative system are fully documented on specific principles and can be considered and rationally justified, and it clarifies the full accuracy and sharpness of the Sharia on the basis of wisdom, justice, compassion and mercy in the scope of family rights, and it itself indicates the existence of a correspondence between the world of Sharia and nature. In this system, the necessity of presidency based on the implementation of benevolence and justice and association based on the famous away from any aggression and damage, violence and domination can be justified and supported and this idea, because it focuses on the emotional and psychological needs of human beings, is not limited to the mere fulfillment of rights [2].

The present study aims to evaluate the joint financial rights of couples in the family from the perspective of Iranian law before divorce, ie during marriage and after that, ie in divorce. In order to express the origin of laws, to clarify the position of women's psychological security and human dignity in the family and the Iranian legal system regarding property and in particular joint property [3]. The value of the family is based more than anything else on the friendship between its members, especially the couple, and if this flow continues on the basis of friendship and understanding and aside from selfishness, it will reach peace and tranquility together and finally the desired human perfection [4]. The financial and non-financial relations of a couple in Islamic law are based on justice. In the financial relations of the couple, the woman enjoys complete independence in owning and possessing her property and each of them can manage and seize their property alone. [5] And this should be considered one of the honors of Islamic law; because before the twentieth century, in most European countries, women did not have the minimum human rights and were among the excluded [6]. One of the most important issues in financial relations between husband and wife is their ownership of home furniture. During matrimony, couples have joint ownership of the property in their home, which results from their residence in a single home, making it difficult to identify the owner and determine the ownership of the property. In the case of home furnishings, there is the issue of separation from the dowry that the wife has with her, although there are still differences in the dowry that the wife also prepares. There is disagreement among jurists and jurists about how to divide common property: Some people think that all property belongs to a woman, some people think about division, and some people think about the exclusive division of property into a husband or wife if the status of ownership is not clear. In other couples' property, the same procedure seems to prevail, and finally, we will describe the ownership and, if it is not clear, a specific use

of it. However, it seems that in Iranian courts there is a tendency to seize joint property.

As we have said, men and women are independent in managing their finances, therefore; their financial relations are based on the same general rules in other financial relations between the parties to the transaction [7]. If the wife is allowed to work, she is also independent in her income, and this income is also one of her special financial affairs. Now, if after the marriage, the wife requests a refund or claims the expenses she has made, what will be the situation? In this case, too, the intention to be free or not free should be checked, and in both cases mentioned and the above explanation and with reference to the custom examined the situation.

Sometimes, conditions are imposed on the couple during the marriage, which is financial in itself, and after divorce, it brings financial burden and legal obligation for the couple. The condition during the contract is the conditions that are imposed on the parties to the marriage contract by concluding the contract, but there are some conditions that are created by the couple in the marriage document due to their optionality. In the Islamic legal system, the right to divorce a man is based on this. Therefore, one of the voluntary conditions during marriage is that the couple agrees to transfer half of the property acquired during their life together to his wife if he wants to divorce his wife one day. Of course, the acceptance of this condition is optional at the time of occurrence, and if the man under the burden of accepting this condition, no one can claim his property. According to Article 1119 of the Civil Code, the parties to a marriage contract may state in the contract any condition that is not contrary to the requirements of the contract. However, mentioning conditions that are contrary to the marriage or marriage is invalid and cannot be used.

**Theories**

- 1- Husband and wife are independent in their financial affairs, whether before, after or after divorce. They can return their private property that they own and the financial rights that are assigned to a woman as a result of marriage can be demanded by the woman under certain conditions and can be considered as the exclusive property of the woman.
- 2- It seems that if the wife has incurred expenses from her personal income, she can claim her expenses if she does not intend to forgive.
- 3- The status of the couple's property during the life of the couple can be conditioned by creating a condition during the marriage of the couple. That a woman can demand it if there are conditions.

**Goals**

- Examining the legal status of the couple's joint property during and after marriage
  - Explaining the jurisprudential and legal system regarding the property of couples in general and joint property in particular in the Iranian legal system
  - Examining a woman's financial rights and financial conditions during marriage and its binding effects after divorce, including the transfer of up to half of assets
- Research background

Regarding the title of our research, ie the legal status of the couple's property before and after divorce, there is no research in Iranian law, and this, in addition to the difficulty of our work, will also confront us with a lack of resources for analysis. Most of the research that has been done has been about examining the financial or non-financial legal status of couples during marriage, and we will mention some of them below:

In 2011, Mr. Mohammad Baqer Asghari examined the guarantee of violation of the condition of not remarrying in marriage. In this study it was stated; In Islamic jurisprudence, polygamy is accepted for the husband, which has also been accepted by the legislature in Iranian law following jurisprudence. (Article 942 of the Civil Code). Hence, the wife may stipulate at the time of marriage during the marriage that the husband will not remarry. The jurists disagree on the validity or invalidity of such a condition. Some consider this condition invalid and invalidate the marriage contract. Some jurists consider the condition invalid but the marriage is valid. Some of them also consider the condition correct. This group of jurists disagrees with each other regarding the guarantee of the violation of this condition. According to some, if the husband remarries, the marriage is valid. Another group considers the marriage null and void. Legal authors also disagree on this point. The present article considers the condition of not remarrying as correct; citing the condition that a Muslim puts before marriage and certain narrations, and the guarantee of committing this violation is that the husband must divorce the second wife.

Haeri et al. In 1392 criticized the jurisprudential review of the license for the condition of not remarrying during marriage.

Fazaeili and Mohammadi in the Family Research Quarterly in 2014 examined some non-financial rights of couples in divorce. When a contract is entered into correctly, it entails certain rights and obligations for the parties. In personal contracts, such as marriage, some of these effects are non-financial rights and obligations. Divorced marriage is no exception to this, and by concluding it, the couple is given a right that terminates the right to terminate due to the defects of the husband and wife, as well as forgiving the remaining period. But the Iranian legislature and consequently the jurists have neglected to explain this precisely, explicitly and clearly.

It seems that considering the spread of this type of marriage in the current society and the existing legal objections regarding terminated marriage and its effects, Members of parliament should seek to formulate explicit and unambiguous legal provisions in order to express the effects of this contract. Among them are the non-financial rights of the couple, so that people can conclude it with full knowledge of the provisions and effects of this contract.

The answer that can be expressed as a general matter is that by enforcing the rule of "no harm in Islam" and the rule of "indigestion and embarrassment denial", the cases of termination of permanent marriage can also be extended to terminated marriage. Also, according to the rules of jurisprudence, the wife can be granted the

right to spend the period under certain conditions. Regarding each of these rights, there are legal questions and ambiguities and differences of opinion. In this article, an attempt has been made to address each of these cases in detail.

In 2014, under the guidance of Mohammad Sadri, Samin Abbasi, in his doctoral dissertation, studied rights and duties couples in Iranian jurisprudence and rights and its adaptation to British rights. Throughout history, rights financial wife has undergone major changes, the most important of which is the system of separation of property and the system of financial couples is subject to contract and law and the legal system has different types and the contractual system is based on the principle of the rule of will, which has certain limitations. rights financial wife in Iran includes bride-price, alimony and retribution In case of death of any of the other couples who are alive he inherits from her. There are ways to adjust couples' assets that are subject to special conditions through the courts. Non-financial rights and duties include three categories (joint, wife-specific and couple-specific), the most important of which is custody, which the legislature gives priority to the mother and then to the father. Data and ultimately decide with the court and in the best interests of the child. Good fellowship, helping each other and loyalty are common duties. In Iran, legal regulations (civil law and family protection law) have undergone significant changes; an Iranian woman marrying a foreign man is effective in changing her citizenship. Although there are major differences between Iranian and British rights, in some cases there is a relative similarity and the use of experience in both rights is not out of reach as long as there is no conflict with values.

**Keywords:** rights, duties, couple, wife, alimony, financial, Non-financial, adjustment, custody.

In 2013, Abbas Hatami Nejad, under the guidance of Ali Taghizadeh at Allameh Tabatabai University, presented a study entitled "Rights and Duties of Non-financial Couples to Each Other" and a review for his master's thesis, are non-financial rights that cannot be calendarized in money, Such as the right to socialize, the right to sex, the right to withhold employment, and the like, some of which are reserved for couples, some for wives, and some for couples. In the present dissertation, this issue is discussed in three chapters. In the first chapter, the principles, concepts, and history of marriage, divorce, and the rights and duties of financial couples will be examined. In the second chapter, the cases of duties and financial rights specific to the wife are examined, and in the third chapter, the joint financial rights of couples and the determination of its duty after divorce are examined. In this regard, we have tried to consider the cases that can be found on these categories in our country's rights, and at the end, solutions and suggestions have been provided in this regard.

#### Research Methods

In this research, information is collected through library studies and the use of software and Internet programs. Conclusion is made by describing and analyzing the collected information. Therefore, the research method is

a kind of analytical and descriptive method. Regarding the method of data collection, it should be said that the most important and main method that has been used and cited in data collection of this research is the use of university libraries and seminaries and reference books and various sources of Shiite and Sunni jurisprudence and rights books. In this research, firefighting, databases, computer networks and software programs will be used as appropriate tools for data collection.

#### Theoretical Foundations

##### Definition of marriage

The civil law does not provide a definition of marriage and only refers to the conditions and types of marriage and that it considers marriage as a specific contract. In the following, we will explain the definitions of marriage in words and terms and types of marriage.

From the Islamic point of view, the nature of marriage is a contract with special conditions and from the point of view of Islamic jurisprudence, it is a recommended and perhaps recommended action, and in some cases it is considered as a cause. Chastity is one of these traits that one of the ways to provide these traits and punishments is marriage. By legislating marriage, Islam paves the way for modesty and modesty by introducing marriage as the best and most natural way to meet sexual needs. According to Islamic law, only the reading of a marriage contract by a woman and the confirmation by a man is valid and does not require a witness or religious representative. Of course, one can be a lawyer who does not have to be a religious representative to read this sentence. Shiites have another type of marriage, known as temporary marriage, in which a marriage contract is concluded between the two parties for a certain period of time. According to the same Shiite authorities, the father's permission is not necessary for a mature daughter in a temporary marriage. After determining the duration of the marriage and the bride-price, the man and the woman become intimate with each other by reading the form of the marriage [8].

Marriage literally means (joining). Marriage is the relationship of rights that is achieved by marriage between a man and a woman, so the rights and duties couples mentioned in Article 1102 are in fact an explanation for the relationship between a couple, and clarifies its meaning [10]. Article 1034 of the Civil Code: "Any woman who is free from the obstacles of marriage can be proposed to." Article 1045 of the Civil Code: "Marriage with the following relative relatives is prohibited, even if the relationship is the result of suspicion or adultery [10].

Marriage is a marriage contract in which a man and a woman unite in order to form a family and participate in life. It is a contract that has both financial and non-financial aspects. Because, on the other hand, due to the marriage contract, he is obliged to pay the alimony of the wife and other family members and give the financial to the wife as a bride-price; on the other hand, men and women are obliged to work together to strengthen the foundations of the family and raise children. The famous and classic definition of marriage

in English rights is: "The voluntary unity of a woman and a man for life". In the laws of some Islamic countries, in defining marriage, both aspects of sexual pleasure and matrimony are mentioned. For example, Article 1 of the Syrian Personal Status Law adopted in 2012 states: "Marriage is a marriage between a man and a woman that makes a woman legally lawful for a man, and its purpose is to establish a relationship for matrimony and generation" [11].

In Iranian civil law, this term is used in Article 1102: "As soon as the marriage takes place correctly, the couple's relationship between the existing parties and the rights and duties couples are established against each other." Iranian civil law recognizes two types of marriage, one is permanent and the other is intermittent, each with a different status of rights and different terms and conditions. Civil law in this regard has followed Imami jurisprudence. Divorced marriage is a feature of the Shiite religion and is not recognized as valid in popular jurisprudence. Imami jurists refer to the verses of the Qur'an, especially verse 24 of Surah Nesa, as well as the narration, news, and consensus of religious scholars for the validity of this marriage. [12]

There is no temporary marriage in Western countries, and in some Islamic countries, including Morocco, Tunisia, Iraq, Syria, and Egypt, which is influenced by Sunni schools, intermittent marriage is not accepted. Some Islamic jurisconsult has defined marriage as follows: "Marriage is a marriage that gives each of the couples the right to enjoy the other in a legitimate way." Marriage is also called marriage and *zawaj* [13].

Another major difference in financial bride-price rulings is the alimony heir. So, in fact, temporary marriage is a temporary legal relationship between a man and a woman for a period of time. There are two conditions.

##### Definition of divorce

Divorce is the termination of a permanent marriage by the husband.

As the passage of marriage, on the basis of its social aspect, which constitutes the primary cell of society, imposes a special situation which the law has cut off the will of the parties as it is in transactions but this community cell cannot be considered insoluble, because it is not possible to force a couple, each with their own temperament and morals, to continue their marriage without a spiritual agreement, and prevented them from producing viable new cells. For this reason, in order to prevent the disruption of the order of social cells, the civil law has allowed divorce, and in its article 1139, it says: "Divorce is for permanent marriage ..." In a broken marriage, as will be seen later, the marriage is terminated. Article 1133 of the Civil Code gives the husband the right to dissolve a permanent marriage absolutely without considering any special reason. Article 1133 BC "A man can divorce his wife whenever he wants" but as will be seen later, the civil law also gives the woman the right to file for divorce in certain cases: Such as the disappearance of the husband for four years (Article 1029 BC) Husband refuses to give alimony, Non-fulfillment of other obligatory rights by

the husband, Husband abuse to the point of making life unbearable, contagious disease and incurable, husband who endangers the wife. (Article 1130 BC)

Divorce is with the husband and its validity does not require the consent of the wife or the court decision or Register in the official divorce office, but its fulfillment is not like other obligations such as abrogation, abrogation, recourse to divorce, which does not require any formalities. Rather, it is a ritual that according to the order of Article 1134 BC must be performed in the form of divorce in the presence of at least two righteous men who hear the form of divorce [18].

#### **Definition of property**

Property literally means desire and means and wealth and anything that is in personal possession or possession and in the term is something that has economic value and that can be converted. In terms of rights, anything that a person can use and that can be owned is considered property.

#### **Types of property**

##### **A: Common property**

It is a common financial property that has more than one owner. In such a way that the share of each of them is published in all components of the property or in its particles. In common ownership, the share of each partner is expressed as a fraction of one property. In other words, it is financial in which two or more people are partners and the share of each owner is not clear. For example, one-half or two-thirds or three-quarters, so whenever a house is shared by two or more people, it means that each of the two or three partners in the part of the common property is entitled to their share. Nor can a particle or part of property belong to one and the other part to another [17].

##### **B: Partitioned property**

Partitioned means to divide and belongs to Partitioned financial which is divisible, and specifically the ownership of each section can be divided for the owners. And the term Partitioned versus common is used when, in terms of registration rules, the intention is to separate part of the ownership share of one partner from the share of other partners in a given property [17].

The means of creating diffusion "In expressing the realization of diffusion, there is a more obvious theoretical difference between experts and writers of rights and jurisprudence ,and most of the jurists in expressing diffusion mill point to several reasons. Researcher Helli has considered the means of diffusion in inheritance, marriage, temperament and property and the same thing can be seen in the works of other jurists. Some jurists, such as ebne edris helli, consider diffusion in the nobility to be achievable for three reasons: marriage, inheritance, and property. In any case, diffusion mode has an exceptional aspect and is caused by special causes. These causes are: Inheritance, marriage, possession, and possession, intermarriage "which in the present study is the common ground that arises between couples on the basis of marriage and other conditions [17].

#### **Legal financial system**

The legal financial system is the financial system that the legislator has defined in the law as the default

financial system, and in cases where the couples did not consider the rules of their financial relationship during the marriage; The financial system mentioned in the law will be implemented in relation to them The legal financial system is of two types: Property sharing system and property separation system [18].

##### **A: Types of property sharing financial systems**

In this financial system, a set of property is transferred to the common property of couples and the property of the couple after marriage constitutes a joint property. The inclusion of this joint property in relation to movable and immovable property and assets before and after marriage will be different according to the different system of financial sharing that exists in the rights of many European countries. According to this definition, the subscription may be complete, or the subscription is only in income, or the share of property is a share in income and movable property [18].

##### **1) Full or absolute share of the property**

The purpose of full ownership of property is the joint ownership of the couple in property and assets, which is absolute and complete ownership. In the realm of total assets, all couples' property, regardless of origin and nature, falls within the scope of the common property , and subscriptions include not only assets , but without distinguishing between movable and immovable property All property owned by couples before or after marriage is included , and their income from the day of marriage, in fact, all the property, including past, present, future, movable and immovable property in this regime, includes all the debts of couples, both present and future, in full [19].

##### **2) Income sharing**

The subscription may be only in income, where all the property which each of the couples and the reciprocal debts which each of them acquires during the life of the joint becomes part of the joint property of the two. For example, the income they earn from their own property, as well as the income that each couples earn from their job and profession. In general, any property acquired during the marital life, regardless of the origin of its creation, is considered as joint property of couples [20].

##### **3) Share in income and movable property**

Property Sharing, Subscription, Income and Movable Property. In this type of subscription, couples, in addition to sharing each other's income, also share in the movable property that belonged to each of them during the couple or is given to them for free after marriage. [20].

In a property-sharing financial system, a couple may jointly own some of their property and maintain independent ownership of some of the other property. In this regime, property and assets are divided into the property of the husband, the property of the spouse and the joint property of the couple [20].

In fact, couples do not have joint ownership of property they have acquired before marriage or of gratuitous possessions such as gratuitous forgiveness, inheritance, gratuitous peace, etc. But in other property they have joint ownership and according to this regime, each of the couples can manage it independently in the property that is allocated to them and the property that is shared



is also managed by the head of the family, ie the husband.

#### B) Financial property independence system

In this regime the property is completely separate unless the condition is otherwise such that each spouse has separate and independent control over their property; in this regime, we will not have any set of assets and Common Debt either during marriage or after its dissolution. In other words, couples have a privileged and separate property after marriage. Each man and woman has full independence after the marriage in the office of possession of past property and assets or property acquired during the marriage, and has the right to any material action and rights towards them.

And this is the only regime that has accepted the rights of Iran as the ruling regime of couple's relations and marriage has no effect on property ownership. And the property that couples acquire during their marriage or property acquired through inheritance, peace, will, gift, etc. belongs to the individual, and no one else can share it.

The principle of independence of financial couples and the right to manage and seize their property is one of the indisputable principles of Shiite jurisprudence and there is no doubt or difference in it. The Civil Code, in its Article 1118, as mentioned, has accepted it according to:

"A woman has complete independence and freedom in financial and economic matters and can encroach on her personal property; without the consent of the husband. "Whether that property was acquired before or after the marriage." [21]

#### Couples property sharing during the couple era in Iran

It is a military partnership that makes the total property of the couples their common property, which is divided between the couples and their heirs upon the dissolution of the marriage (death or divorce). Legislators of property-sharing regimes, including France, believe that "joint property lacks the rights of a person and does not constitute independent property, so that couples are given independent rights separately from the property of couples. "Rather, it has been interpreted as an independent entity whose common property in the realm of administration and settlement follows special rules that follow the formulation of the legislature. Therefore, sharing is interpreted as joint property of an independent set of property of each of the couples, which is specifically allocated to the family. The effects of the nature of its rights will appear on couples as well as third parties. "Before it was shared, property was the property of both men and women; now, with marriage, matrimony, and family formation, it also belongs to the family." [26]

The legislature views the property of couples

In the Iranian system of rights, following Islamic jurisprudence regarding property and according to the jurisprudential rule of civil law, "every owner has the right to any possession and use of his property [24]"However, he has considered some cases as exceptions according to the law. "The provision of this

article regarding the ownership of property and assets in the marriage contract is also considered for each of the couples. In the sense that couples each enjoy material and spiritual rights, and the exercise of these rights, in addition to the general conditions, including the ability to enjoy, requires the right of sovereignty and independence, and does not remove the non-financial as well as the non-exchangeability of the marriage contract, rights and duties financial, which in addition to non-financial rights and duties are also stipulated by the law between couples. The legislator's view of the financial wife's independence stems from the rights system, which has recognized the independence resulting from financial relations not only as legitimate and emphatic for the wife, but also for the couple. "Financial independence and possession of property in connection with marriage is one of the rights and duties that have been established between them based on the fact that each of them has independent property and assets. Couples have enjoyed these rights not only in marriage but also before, and marriage does not mean deprivation of these rights, and they can even specify to grant more rights to each other. Civil law describes Article 1118 of the Civil Code in expressing financial independence between couples, and Article 1119 of the Couples Agreement Article, while concluding a marriage, refers to rights and duties, both financial and non-financial, and under the title of necessary external conditions or contract that is not contrary to the requirements of the nature of the contract, while the obligations of each couples to each other that is not explicitly contrary to the law, the condition or premise between couples is also binding and binding. Explaining that rights Iran has not provided a definition of financial couples independence here, before entering into other topics on the subject of research entitled the nature and effects of couples' assets in a permanent marriage, the mutual commitment of each couples to the other as a partner and not a financial partner, and guarantees the length of the matrimony as well as in the event of the death of any other.

Unlike the rights system of Western countries, which is also pluralistic, in Iranian rights, financial independence has been accepted as the system governing couples relations. According to the indisputable principles of Shiite jurisprudence, it is based on other reasons and is the only system governing financial couple's relations. The independence of financial couples according to the definitions provided; They have meant that "Couples with long marriages each have separate property and the property of a man and a woman does not include a joint property, and after the marriage, the woman has complete independence in managing, arranging and seizing the property and assets or property acquired during the marital life and can have any material possession and rights towards it [33]."The legal document based on the system governing financial couple's relations is Article 1118 of the Civil Code, which allows women to be free to seize any property they want. And in the sense that each couple has an independent function in owning and managing their

assets and property. Given that the civil law considers the head of the family to be one of the characteristics of a couple, this does not mean depriving a woman of her free will in what she owns; and that male guardianship does not mean depriving a woman of her independence in protecting her individual and social rights and interests, and women still have their independence and freedom and can defend it [25].

**Check the ownership or income of couples**

This section examines the property of couples and the income that couples earn from their jobs during matrimony. It seems that just as the property of couples is independent from the point of view of our law, the income that couples earn through their jobs is independent and couples can't share in each other's income.

Thus, couples in Iranian rights, which also follow Islamic jurisprudence in this section, are financially independent. They can freely dispose of their property and exercise any material rights or obligations towards them. The husband has no right to interfere in the wife's property and assets, and it is true that the law considers it the head of the family, but it does not create any authority for him in this regard. In this regard, the rights of Islam and Iran give full importance to women and, unlike the former rights of Europe, do not recognize women in any way. Article 1118 of the Civil Code states in this regard: "An independent woman can make any seizure of her property as she wishes." The income that the wife also has from her job is part of her property and the wife does not have to give it to her husband for free, and women have complete independence in the income from their business. If women's right to work is recognized but their financial independence is taken away, then the benefit of women's work will not reach them and women will not have access to what they can afford. Also, in this respect, women's financial independence is closely related to the right to work. In Islam, it has recognized women's property rights from the very beginning, and women are independent in whatever financial they have and whatever decisions they want to make. [26]

In matrimony according to Iranian rights, the man, like the woman, is independent in his property and no partnership is obligatory for him during the couple, unless otherwise stipulated. In fact, due to the protection of women's rights and the protection of women, they have been making the condition of division of property for men for more than two decades. Whatever a man gets during the couple (according to the circumstances) and when the man wants to divorce the woman. According to the court, up to half of a man's property, a woman can be a partner and claim it. In fact, according to the condition of division in the marriage contract, the woman becomes the owner of up to half of the man's property when the man wants to divorce her, provided that the woman has not forced the man to divorce her in a marital relationship. We will talk more about this condition later [27].

### **Sharing or independence in home furnishings in matrimony of couples**

Another important issue is determining the duty of home furnishings that couples produce in matrimony. There may

be a dispute between couples over the ownership of some of the furniture, which makes it difficult to prove which person owns the furniture, as there is no specific provision in civil law regarding the difference between couples in home furnishings. But it is possible to use general provisions in the law and find a ruling on this issue. A dispute between couples over ownership of property in the home occurs when neither couple has a reason to own and the entire property is in the possession of both. Possession of property varies by type of property, sometimes with an object in someone's hand. It is a sign of possession, like money or an object in the hands of a person; sometimes the property is not in the hands of the person but is somehow related to his body. Like the clothes that a person wears, in some other cases, even though there is no physical relationship between the person and the property, according to the validity and social and contractual facilities, the property is considered as the possession and domination of the person, such as existence. The title deed of the house is in the hands of the person who shows that the house belongs to him. In any case, the possession of property by a person should be such that he considers the custom of the possessor as the owner of the right and the owner in possession of the property. It is used and the civil law, following the Imamiyah jurisprudence, considers iodine or possession as a property and states in Article 35: "Possession as property is a proof of ownership unless proven otherwise." Thus, the law considers possession as a reason for ownership as long as there is no reason to the contrary. In discussing disputes in home furnishings, the popular opinion among Imamiyah jurists who believe that a woman's property belongs to a woman and a man's property belongs to a man should be considered compatible with the provisions of the iodine rule, because whenever the property is one of the couples, His dominion and authority over this property is more than the other, so his possession should be given priority over the common iodine [28].

Article 72 of the Rules for Enforcement of Official Documents, adopted in 2008, as in Article 56 of the former By-Laws, stipulates that, following the popular opinion among Imamiyah jurists, Used by women is the property of the woman and what is normally used by the man is the property of the husband and the rest of us will be considered common between couples, unless proven otherwise. "Therefore, according to this article, if neither of the couples have a reason for their ownership and the property is in the possession of both of them, in relation to the property that is the exclusive use of one of them, it will be ruled as the ownership of the same person "and in the case of property used by both of them, there is a ruling that this property is shared between them. Of course, the order to share property is when there is no special custom: Because according to the current custom, the wife takes the dowry with her to the couple's house when she goes to her house. Therefore, it is not possible to share a ruling regarding this property, but it is necessary to refer to custom first, and if the female mystics take this property to the husband's house, the ruling should be owned by the wife and if there was no custom, he ordered the sharing of property between couples and this is the only place where you can see the sharing of property in matrimony and there is no sharing in all other property owned by each of the couples and the ownership of the property is independent [28].

**Subscription or independence of couples in income and business**

One of the consequences of the principle of financial couples' independence is that men and women will not share each other's income. This is not a problem in itself, but in the culture of Iranian families, another problem is that Iranian women are mostly housewives, although men are more likely to work and earn a living. She gives income but the woman herself has no income. The natural result of this situation is that the man, after several years of working as a homeowner, real estate and... But the woman's share of the work was only daily food and clothing. It may be said that according to Iranian regulations, a woman has no duty to do housework. Even breastfeeding mothers do not have to breastfeed their children unless it is not possible to breastfeed without breastfeeding and in return for what she does in the husband's house, she can demand compensation from the husband, unless she has done it with the intention of forgiving, which degrades her dignity at home and, in addition, leads to the deterioration of couples' relations [17]. This problem has arisen from ignorance of the rules of Islam and from the abuse of the goodwill and loyalty of women by some men. In other words, men and women often think that the work and service that a woman does in a man's house and the products that result from it belong to a man, while according to Islam, a woman has complete freedom in terms of work and activity, and any The income he earns belongs to him. Islam, with its economic independence, has given women a wife, as well as the cost of living for them and their children. It has given him a sufficient and complete opportunity to deprive himself of a man in terms of wealth and facilities and the facilities of a dignified life, so that there are no consequences for him to separate [29].

This may not be due to ignorance but to the woman's loyalty to her husband, but it should be noted that if the woman's loyalty is not accompanied by the man's reaction, it is troublesome. If a woman donates her labour for the welfare and comfort of a man, the man must also donate part of his income to the woman. [29] Finally, it should be said that neither the woman can be a partner in the husband's income nor the man can claim a share in the wife's income and each of their income is considered as their own property and they can decide on it independently. The question here is whether he can get it back if his wife spends it at home? The answer seems to be yes, but as long as she does not intend to forgive, as mentioned, the cost of living is borne by the husband and he has to pay the matrimony, but if the wife spends from her family income, as said: she can claim those costs from her husband if she does not intend to forgive.

So, in fact, a woman's economic work is part of her property, and a woman does not have to give it to her husband for free, except for work that, according to custom, is considered a woman's duty for the sake of good companionship or assistance, here a woman cannot demand a wage for it. Women have complete independence in the income from their business [30].

**Couples' joint property at the time of divorce in Iran**

As we have discussed in Iranian rights, the system governing couples relations is the system of financial independence, but in order to protect divorced women, the only place where property sharing is seen at the time of

divorce is on condition of halving the assets. In the official marriage contract, the condition of obliging the couple to transfer up to half of the property to the wife during the divorce is stated, so with the condition of halving the property that we bring in the contract, if the man wants to divorce the wife and the reason for divorce is not the wife's violation of marital duties. During the male couple, the woman becomes a partner. Of course, in the text of the condition, it is said that up to half of the assets, not absolutely half of the assets, and it seems that the conditions of this condition can be changed. For example, to bet on half of the property in absolute terms, or to bet even if the couple does not file for divorce a woman can share in half of a man's property, and in this article we will review this condition.

**Conclusion**

The sharing of financial couples before and after divorce in our rights has not been discussed as much as the rights of Western countries, and in couple relationships, the principle of women's financial independence are the most important rule. Because in Islamic jurisprudence, women, like men, have all civil rights and with competence, she has independence and freedom of action in her financial and economic affairs, and she can encroach on her property without the need for her husband's consent.

Civil law, following Islamic jurisprudence, recognizes women as financially independent and entitled to possession, and independent couples can have any possession in their property they wish. But the only place where property sharing is seen and usually after a dispute between couples, and that is one in relation to when there is a dispute between a man and a woman in the furniture of the house, which is actually said to be property belonging to a woman is part of the property wife and property belonging to the man are part of the property of the man and the property that is not specified will be divided between the two parties, and another issue of sharing the property at the time of divorce will arise according to the conditions mentioned in the condition of halving the property in the marriage document. Of course, it should be noted that it seems that couples can change the condition in another way and even create other conditions for sharing their property during the marriage.

**Suggestions**

- 1) It seems very fair that Islam and Iranian rights have accepted the independence of financial couples, but it can be said that in terms of women's activities at home and their role in raising children and taking care of household affairs because women's activities At home, it is indirectly effective in increasing a man's wealth and assets and this is not only undeniable, but it can be said that it has a profound effect on the family, and a woman spends all her life with her husband and children, and even in today's society, most women work outside the home and earn money. They do for the family. It seems that the condition in the marriage is that the property of the man that he acquires during matrimony should be shared by the woman during the couple, and on the other hand, another decision should be made for the bride-price and other rights



of the woman. That is, it should be legal to limit the amount (because we see a lot of the bride-price issue in court, which unfortunately, the woman abuses the heavy bride-price by pressuring the man and destroys the warm hearth of the family because of this issue) and more to protect women's rights to share property, although there is a halving condition, but only at the time of divorce, it is determined by the court according to the conditions of the man. It is better that this partnership be during both the couple and the divorce, and that a law be passed in relation to it, and not just a condition during the marriage.

- 2) One of the problems in the condition of halving the property is that the man is not informed about this condition at the time of marriage, and we have seen many times that the man only noticed the bride-price in the marriage session and he signs the rest of the terms without even reading and noticing. When there is a dispute between couples and after the woman demands. It is only then that the man realizes what he has signed. It can be said that if a man does not intend to sign this condition and signs it without understanding, the condition is void. But it must be said that unfortunately the man's objection to the fact that they did not understand is not accepted. In fact, my suggestion is that before reading the contract form, as the man and the woman explain in relation to the bride-price amount in the official document, so should the terms of the contract and know it from the duties of the concluder and inform the man and woman of those conditions at the time of marriage.

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