

Divorce in Iran and Cases in Which the Woman Has the Right to Divorce

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ABSTRACT

Divorce means the separation of couples legally so that after it, the marital legal relationship between them will be removed. According to the Civil Code of Iran, the request for divorce can be addressed after receiving it by the court from the wife or his husband. In some cases, the divorce can be occurred by the precept of the court and without the consent of the man, which is called legal divorce. For example, we can refer to the divorce due to the refusal or inability of the man to pay alimony, divorce because of the Asr and Haraj and divorce due to the long absence of the man. As well as, the woman could by taking the right of divorce from her husband in certain circumstances to be separated of him under the precept of the court.

KEYWORDS: divorce, woman's attorney, legal divorce, Asr and Haraj.

INTRODUCTION

Definition of Divorce:

- 1) Literally: means getting rid of and being free, to leave, giving up etc.
- 2) Termly: means to end the marital life by either of the couple.
- 3) Legally: ending the permanent marriage by the man [1].

Divorce can be considered an institutional manner in which under the supervision of social organization, couple can terminate their adultery marital relationship. In other words, divorce is the legal termination of the marriage under certain religious, legal and customary circumstances that after its realization couple have no rights and obligations with respect to each other [10]. According to [11], divorce is a process that begins with the emotional crisis of both couples and by trying to resolve marital conflicts through separation would terminate by entrance of couples into a new situation with different roles and lifestyle [11].

Divorce has a profound economic, social, psychological and legal impact and consequences on the parents and the children of divorce as well as the community [12].

Many studies have suggested the existence of relationship between divorce with addiction, crime and delinquency, psychosis, personality imbalance, education and training problems, suicide, social transgressions and so on.

The family is a foundation that in Islam as well as other religions is insisted on its preservation and continuation. But sometimes some circumstances arise that cause this relationship and its continuation to be very difficult and to get rid of this difficulties couple decide are would be obliged to be separated.

The historical trend and evolution of laws related to divorce in Iran Law

In the Civil Code of Iran, divorce is spoken in three ways:

First- divorced by the will of men: This issue in Article 1133 of the Civil Code, before its revision, was such that according to it the man was allowed to divorce his wife whenever he wishes. The terms in the aforementioned article clearly show the absolute power of men in divorce. It is such certainly that the judge almost cannot to avoid the divorce and therefore court to a great extent neglect to address the substantive proceedings. This article in the year 2002 was amended as follows: "the man can by respecting conditions prescribed in this act to go to the court and request divorcing her husband".

Proviso- woman can also respecting the conditions prescribed in Articles 1119, 1129, 1130 of the Civil Code request her divorce from the court.

Second- divorce by the request of woman to the courts: this type of divorce law that is called also "legal divorce", which may be issued in three cases: the absence of husband (Article 1029), refusal of man to pay alimony (Article 1129) and Asr and Haraj (Article 1130). Article 1119 has also spoken of the attorney in divorce.

Third- divorcing based on the agreement of couples: this issue is stated in Articles 1145 and 1146, i.e. KHal' and Mobarat (Article 1146: the Khal' divorce is such that woman due to her ugliness of her husband want

divorce of him and instead may give some properties to him. This property would be less or more than the contracted quantity).

Three different periods of the legislation in Iran can be stated that on each of these periods it has had specific conditions:

First- it relates to the law of marriage in 1931 and Article 1934 of the Civil Law in which man had an unlimited power to divorce his wife;

Second- during the years 1967 to 1977 a law was approved to protect women. Although this approval reduced the power of man in divorce and led to the involvement of the court, but, it was faced with criticism yet;

Third- the period after the Islamic Revolution and the adoption of the laws of the specific civil courts as well as the law of revisions related to the divorce, which to some extent deceased deficiencies and shortcomings related to women's rights in the field of divorce [4].

Divorce in Islam

Divorce in Islam is a signatory precept and not a established ond, i.e. before the birth of Prophet Muhammad divorce, especially among the Arab Human ignorance was common, and it was accepted unconditionally and so easy that the Bedouins frequently divorce their wives without paying any rights to them. Although Islam reformed the principle of divorce, but limited its circle further in favor of women. The philosophy of allowing for divorce in Islam is that it considers the divorce as a the last way to resolve the intense differences between couples, in a situation in which its continuing fore for both parties or one of them is not possible. In this case, if the separation provides benefits to the both, it would be allowed [3].

The women's authority in divorce

Generally, women can in some ways apply his will and role for the divorce, including:

First- obtaining this authority of her husband: she may under the conditions when doing the marriage to require her husband to give her the right of divorce under some specific conditions [4].

Second- attorney from the man: this legal was first predicted in Article 4 of the law marriage. The article stipulates that: they can contract that if man do some specific actions or if he refuse to do some determined actions, e.g. his absent for a long time, refusal to pay alimony and so on, then woman according to the contract and based on the occurrence its condition can request her divorce of the court. Article 1119 of the Civil Code after some minor revisions stipulate that: [... marriage parties can add new conditions which are not in opposite to the rationality to the marriage conditions]. For example, if man took another wife, long absence or leaving the alimony then woman would have the right to divorce of his husband.

Documentary evidence for the attorney in the divorce

Documentary evidence for the attorney includes specific narratives such as a narrative from Imam Ja'far Sadiq that according to, it Imam about the man who had allotted his right of divorce to another man said that his work was permissible and there was not any problem.

From this narrative it is concluded that the presence or absence of the husband is not necessary for divorce, because Imam prior to giving answer to that man has not asked whether the man had been with his wife or not? So, in terms jurisprudence, leaving Estefsal results that it is ok absolutely [6].

Referring to the religious texts as well as opinions of jurists, the cases of attorney in divorce can be characterized and the opinion of jurists to be stated in each case:

- 1- The Attorney of the absent man to another man to divorce, which its accuracy is confirmed by the almost all the jurists, e.g. Muhammad al-Najafi in the book of Javaher al-Kalam.
- 2- The Attorney of the precept man to another man to divorce, which its accuracy is confirmed by the most of jurists, e.g. ShahidSani and Yousef al-Bahrani, which their evidence is the book of Javaher al-Kalam.
- 3- Giving attorney to woman either by a precept or absent man. According to the opinion of many Shiite jurists the attorney of woman in divorce is allowed so that it said that the divorce of Adele requires the license for the woman's authority. Also, regarding that the Prophet has given the right of divorce to his wives it can be concluded that woman can be the lawyer his husband to divorce [4].

Shaykh Tusi believes that: a man who is precept near his wife can only divorce by consultant and even he has said that the attorney of woman for her divorce even in case of absence her husband is not correct [4].

Woman's attorney for divorce can be allowed in one of the following three ways:

- 1- Conditional attorney without the requirement of proof at trial;
- 2- Conditional attorney with the requirement of proof at trial, which are predicted in Article 1119 of the Civil Code and official marriage.
- 3- Absolute attorney without any constraint or condition [4].

In Islamic jurisprudence nothing is wrong with this type of attorney, because according to the arguments there is no difference between the attorney of woman and others for occurrence of divorce. Also, man give generic or absolute attorney another man for his divorce, as it is accepted also by the Civil Code.

Imam Khomeini besides responding to a question has said: [...the holy God has determined for women an easy way to take up the reins of divorce themselves; meaning that in addition to their marriage if record the condition for having the right of divorce absolutely, then they will be able to divorce independently of their husbands ...] [2].

Third- obtaining the sentence of the court to divorce: which is known as the “legal divorce” or “divorce by ruller” and is noteworthy in a few cases:

A) The absence of husband: absences of man due to travel or other events and consequently the ambiguity is his place are of the conditions that women are allowed to divorce of their husband, as it is stated in some narratives, including SahihjhHalabi: “فانى اريد ماتريد النساء” or SahihehAbi al-Sabah al-Kanani: “انا اريد ماتريد 4]”... [4].

Abu Basir has narrated from Imam Sadiq that if a man does not provide the cloth and food needed by woman then Imam must to separate them of each other [7].

In this case, Abu Hanifeh and Shafi'ibeive that if a man be missing, his wife can after the expiry of a certain period of time, which until his end the individual would not remain alive, can remarriage. According to the opinion of Malik, when 4 year of refer of wife to the judge is passed, if no news is available of his husband, she must keep Ede for 4 months and 10 days and then can she can remarriage.

Shiite jurists believe that if the absent man has some properties which can provide alimony of woman or if the parent of man agree to pay her alimony then until woman is not sure of the death of man or divorce by man must wait, otherwise she can goes to the governor and the governor four years since her precept give timeand these years seeks to find the missing man and if he was not found, if the missing man has a parent or lawyer, the ruler requires them to divorce the wife and if they refuse to give the wife divorced the ruler would oblige the. After the divorce the wife should wait 4 month 10 days and then she cans remarriage [3].

B) Divorce due to the refusal or inability to pay alimony: Imam Shafi'I, Ahmad and Malik believe that woman can in case of refusal or inability of the man to pay alimony can request her divorce of her husband, but Abu Hanifa does believe so. Some Shiite jurists think the same, but others including Syed Abul Hasan Isfahani and Seyed Muhammad Kazim Tabatabai believe she has the right to divorce[6].

C) Illaor obligation of the man to the leaving of the specific duty of parity: when the man swears that he will leave his wife's Vaty for over four months, this is called the divorce of Illa. In this case Abu Hanifa says: If during these four months the man does not break his sworn, the wife according to the divorce of Baen would be divorcee without the need to go before the judge.

Followers of Malik and Ahmad and Shafi'i believe that in such cases it should referred to the judge and judge should require the man to fuck her ass and if he refused obliges him to divorce his wife and if he refused the ruler would divorce the wife absolutely, which is called the divorce of Raje.

D) Divorce due to the Asr and Haraj: the most important issue stated in Article 1130, i.e. divorce on the basis of Asr and Haraj, is identifying its criteria, because the precept of Article 1129 is also applicable to the following cases:

- 1-Incases where husband does not fulfill rights of woman and coercion is not possible,
- 2-The unlawful relations of husband are so high that woman cannot continue to live with him at all,
- 3-When due to the incurable infectious diseases the duration of marriage for the woman would be dangerous.

Proviso: Asr and Haraj means a situation which cause the continuity of the life for the wife to be along difficulties and the bearing of that situation to be hard. The following cases include criteria which confirm the occurrence of Asr and HARaj:

- 1- Leaving the marital life by man for at least six consecutive months or nine intermittent months during one year without valid reason.
- 2- Addiction of man to one of the types of drugs or alcohol, which disrupts the basis of family life cover where he refuse or cannot to give it up during the period that the doctor has distinguished as needed. If the couple does not fulfill its commitments or after leaving return again towards drugs, based on the request of the wife, the divorce will be possible.
- 3- Definite conviction of man to imprisonment for five years or more.
- 4- Beating or any regular abuse by man of the wife that traditionally the wife cannot tolerated given the situation of wife.
- 5- Infection of man to any factious incurable mental disease or any other incurable disease that endanger the marital life [4].

E) Giving the right of divorce to women: in Sunni religious in addition to dissolve, another legal ways are predicted, including: Tafviz, Takhyir or Tamlik [4].

Fourth- divorce of Khal': it is when woman gives something to man in order to man divorces her. Shaykh Tusiin Nahayeh and Ravandi in Jurisprudence of Quran have said that if the woman do Khal' then man must accept it. Their term is "فتمتس معنهما هذا القول ولمنحها عصيانه في شيء من ذلك وانما تنطبقه وجب عليه خلعها", i.e., when you hear the abomination words of the woman or in some way detected her disobedience then it is obligatory to divorce him.

Another Sunni writer has said: as the Islamic has given the right of divorce to man to use of it as he wants, the right of Khal' is also given to woman to get rid herself of resentments and losses imposed on him due to the marriage.

Imam Baqir said: When a woman says to her husband: I do not obey any command of you, it is lawful to take what his wife gives to him and then to divorce her".

Elsewhere it is said that Habiba daughter of the Prophet's easy to him: whatever Sabet has given to me is in my hand. The Prophet said to Sabet: Take it and he took and Habiba went with her relatives.

As it is seen, in this narrative after the wife demonstrated her discontent, these paration is achieved and divorce is not needed [7].

Conclusions

Divorce literally means getting free or being given up and idiomatically means the separation of couples legally so that after that legal marital relationship between them would be canceled. According to the Iran's Civil Code, divorce can occur based on the request of the husband or wife of the court and after that the court would address and investigate their request. In this stage, if judge consider the reasoning by husband or wife to divorce as justified then he would issue the divorce by referring them to the divorce and marriage offices. In some cases, the divorce can be done without the consent of the husband and by the verdict of the court, which is called juridical divorce. The other situations which lead to divorce without the consent of the husband include: divorce due to the husband's refusal or inability to pay alimony, divorce due to the Asr and Haraj, divorce due to the long absence of husband. In certain conditions, woman could by getting a divorce attorney from her husband, introduce herself as the lawyer of her husband in the execution of the divorce and after the conditions of divorce are met can proceed for divorce independently of her husband.

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