

The nature and effects of husband possessing his wife's property in Shia jurisprudence and Iran's law

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ABSTRACT: With marriage wives and husbands become rightful and also responsible towards each other. In Islamic and Iranian law the financial independence principle is the basis of financial relationship between couples. And both wife and husband have complete freedom (independence) in possessing their properties. In Iran's law, man and woman's properties don't form a common possession, and each one's property is independent from the other ones and therefore women are financially independent in Iran's law. Women can freely possess their properties and do any physical or legal actions about them, whether they are dowry or not. Men don't have any rights to intervene in wives' properties and their presidency does not result in any authority in this regard. Clause 1118 of law says that: women can independently possess their properties in any way that they want. Note 6 in the law of revision of regulations about divorce sanctioned in 1371, has bounded the courts that in the cases that the man requests for divorce and this request is not because of woman's delinquency from her duties as a wife or bad behavior, actualize woman's appeal for the wage of activities that haven't been legally her duty but she has done them with the aim of benevolence and obeying her husband, assess the wage and order to pay it to the woman. The rule of paying for the wage of the tasks that woman does with the aim of obeying her husband does not limited to divorce. It is a general rule that is workable in other cases. This study which has been conducted using library method and is of descriptive type, proves (the Principle of not possessing women's properties by their husbands in Shia jurisprudence and Iran's law citing to reliable documents and sources (Verses, traditions and current laws in our country).

Keywords: wife's financial independence, Shia jurisprudence, Iran's law, not possesses by husbands.

INTRODUCTION

One of the injustices that has been imposed on the women throughout history, denial of economic rights is. Women before Islam was not only deprived of any economic interest but also the interest of others rather than his share of the inheritance, rather than stamped, whether the result of his labor was denied. The Myth and discriminatory culture for centuries after the dawn of Islam, there are still many countries, governments and economic barriers to women's rights. But Islam begins his invited, to explain the true image of women and removing dust illusions and superstitions, many financial rights and economic independence for women proved he was. One of the major problems in Iran, Iranian women's rights and is. Effort to restore the rights of women and finding his original position, after the revolution, especially in financial matters has been done. In Islamic law, the Quran explicitly given almost fourteen centuries ago, women got their full human identity And she was like, man, sufficient authority and full independence was granted to the property and the rights and duties were assigned to him. It seems to seek appropriate legal structure and principles of Fiqh (jurisprudence) which is taken from the Quran and Sunnah Ahlby best tool for protecting the rights of women. The evaluation of the property rights of couples and couples seize the property of the wife to discuss this matter.

Theoretical Foundations

1- Jurisprudence financial independence wife

1-1-Financial independence of women in the Holy Quran

Verses that indicate the financial independence of women divided into three categories: The first verses that explicitly, women's inheritance and property business owner, they have. The second revelation in the form of command, to the fact, that women are ownership of their own property. Three verses that say women have special possessions.

a. Explicit verses on women's property

1. Inheritance:

Men of what the parents and close relatives had left their share, And women of what the parents and close relatives had left their share, whether the property be small or large, the contribution is due (Surah Nisa, verse 7).

2. Wages:

all the things that God has preferred some of you above others and wish not to excess. Men than it is to the interest acquired And women with what interest is acquired and Increment and ask forgiveness of Allah: verily Allah is Knower of all things (Surah Nisa, verse 32).

b. The obligation to pay property revelations Women

1. August:

Upon marriage, women's love, which is forgiveness from those you have to pay (Surah Nisa, verse 4).

2. Wages Milk:

So if women are breastfeeding your child to get them paid (Surah Divorce, verse 6).

c. Signs indicating the occupancy permit

1. Gifts:

If anything, it (dower) to give satisfaction to you, lawful and wholesome take (Surah Nisa, verse 4).

2. Peace:

And if a woman fears ill usage or desertion on her husband is not an obstacle to peace, and peace is better (Surah Nisa, verse 128).

3. Amnesty :

And if ye divorce women before intercourse , whereas for the specified dowry, Half of what I 've determined (to them) , unless they (your right) they.

4. Instead:

If you do not comply with God's fear that some obstacle that bitch pay for them (and divorce).

1-2-Validity of women's financial independence

Various religious traditions have entered the fields of financial independence for women are clear evidence of that here, as some of them are mentioned

1. Zarareh says Imam Baqir said: A woman who is mature, Can buy and sell, free slaves, martyrdom is acceptable for any seized property is later (Toosi, 1978 and 1994).

2. Ibn Aby hamzeh of Imam Sadiq asked the woman to perform Haj is not obligatory, and his wife does not let him go to Hajj. This person has been on vacation and his wife's Hajj is prohibited. Imam answered and said to her husband in the Hajj, Man on his wife is not entitled to obedience, if she wanted to go.

3. In another narration Zarareh from Imam Baqir asked the same question and he said: the husband does not allow to the wife. Imam said she should go, even if the husband is not allowed (Kolayni, 1970).

1-3-View, scholars and jurists of women's financial independence

Bahjat perspectives:

Financial income women, including salaries and benefits, alimony, dowry, inheritance, gifts, wills and owned, saying fees, ..., she held her own and it is independent and has no legal obligation to spend it in the family (Bahjat, 2010).

Golpaygani perspectives:

Financial independence means that women can marry her after all the assets and property of their past captured their equity, And during the life of your spouse to the acquisition of new property deal, In addition, to all of their personal property, without the consent of the husband is needed, the manipulation And in any order that it deems it necessary to postpone the operation to take it (Golpaygani, 2004).

Khomeini perspectives:

The basic principles of Khomeini's Islamic economic system is not isolated from the social rights of women, In this regard says a woman should have the same rights as men. Islam has the right to decide the fate of both of them and enjoy all the freedoms granted. The right to elect, vote, be elected, training and exercise all economic tasks (Mousavi Khomeini, 2011).

1-4-Financial independence of the law wife

1-4-1-Dowry

The regulations set out the dower of the Civil Code, Article 1082 of the Civil Code is amended by appending a clause that is, Material and its additional amendments adopted on 04.29.1376 is as follows : At the time of the marriage , the wife becomes the owner of the seal and can capture any type that wants to be in it ; Additional Note : If the bride is the common denominator, The annual price index is proportional to the time of payment relative to the execution of the contract that Determined by the Central Bank of Iran will be calculated and paid , Unless otherwise consent to be married couples when playing (Makarem Shirazi, 2000).

1-4-2-Alimony

Regulations relating to the maintenance of the wife , the Civil Code of 1107 instances of Alimony, 1110 people died in the civil law wife alimony, 1205 of the Civil Code and Article 642 of the Civil Code guarantees the payment of alimony rights guaranteed in criminal enforcement of the payment of alimony , Developments are part of the Revolution.

Depending on what is in the civil law, the marriage taking place correctly, the wife is entitled to alimony. Husband's alimony obligation of permanent marriage, the marriage becomes necessary to mention it in the context of marriage is original text of Article 1107 of the Civil Code has also been "The maintenance of housing, clothing, food and household items that we would normally be appropriate to the situation of women And the servant of the servant habitually woman or her needs by disease or organ failure" Evidence in support of the law is the law. Although jurists of alimony to mention some examples point out, however, alimony is not unique in this case. It has everything that it needs to be faced, it is necessary to prepare couples.

1-4-3-remuneration

The wife, who adopted the financial right of revolution , Note 6 : An Act to amend the provisions relating to divorce , modification is 8/28/1992 .In the notes to the financial rights of the wife mentioned differently : for example remuneration and forgiveness, Text Note 6 as follows : After the divorce, the wife 's request to charge fees that are legally responsible for what he has , Primarily through the Peace Court action against his wife 's wishes , if not, may the peace, While signing off , if necessary , on the finance is provided , as is its practice , Otherwise , if the wife does not divorce request And divorce is not from the wife of the duties of wife abuse or misuse of ethics and behavior, The procedure is as follows :

- A) If the wife what he was legally responsible, Couple ordered to be done with no intention to fix charge ,The court also proved to be Calculate the work done by the court saying compensation and to pay the penalty.
- B) otherwise the paragraph a , depending on the duration of life and the things that she has done in her home, Financial and vast couples , the court will determine the amount of the wife's forgiveness (prepare a set of rules and regulations for women , 2000 , p 59)

In paragraph (b) Amendment Act to amend the relevant provisions of the Divorce Act 8/28/1371 Single Article 6 of the Expediency Council, the law provides that if the action of the paragraph, and the sentence was to pay for example, to grant judgment in this case should be.

Forgiveness means of dowries, the Quran says willing to pay dowries to their wives (Surah Nisa, Verse 4). The word Nahleh after the word forgiveness believes that a clarification has been incorporated, Some base their decision the verse above. The word of Nahleh in this verse from the Arabic literature suggests definition of dowry is paid, Give or is free of charge and with no intention to payback.

1-4-5- Dowry

Dowry that a woman's dowry custom home with her husband, the wife's dowry gives advantage to the husband, (Langroodi, 1991).

Legally women have complete financial independence and a couple of dowries are not any right to property and Couple just cannot use the conventional property.

2-Failure to capture the essence of the contract on the property, the wife of the couple's rights

2-1-Type the rights of couples and the tax regime

2-1-1-Financial independence Couples

a) The rights of couples' financial independence

Single tax regime on the rights of couples, couples who have financial independence, since the compilation of civil law in 1307, was a stable. This stability is a result of the firm. Religious and spiritual roots of the rules governing these relationships that prevent injustice in the relations between husband and wife is considered to be the cause of this instability, As the Qur'an states: equal rights for women, provided him with assignments.(surah baqareh, verse 228)

b) The financial independence (separation of the couple's property) rights in Iran

The couple's financial independence and the right to manage their property and possession of certain principles of Shi'a jurisprudence are and there is no doubt and dispute.

That is the general rule of what men earn and derive from that earn interest, and the women also, and derive its interest (Surah Nisa, verse 32) implies the claim is obvious.

2-1-2-Financial participation in the rights of married couples

Subject to the proviso in the contract document, due to its influence on the current law is; Clumsy imitation of Western culture. It seems that the battle for the family provided. No one is denying the need to protect women's rights in the family property. But this support should be done in a manner that is consistent with the habits and customs and social fabric of society and corruption, not to burden.

Subscribe assets, rights and lifestyles of the Western Family, Variety of legal and social challenges of managing and refining complex enterprise havoc. A quick look at family law in France shows the family and the treatment of all forms of property, marriage and divorce and child custody issues further; A part from the problem that has long been predicted to share the document with the colored community welcome it go to be (katooziyan, 2002).

2-2- The wife's dowry

Long or installments for paying all or part of the seal can be Article 1083 of the Civil Code

2-3- Wife Alimony

Paying alimony to the wife in two ways, namely:

- a) A woman in her home, according to the conventions of life, food and other living expenses paid by the husband.
- b) She demands its daily maintenance, daily maintenance of the couple separately to surrender his enlightening. Imami jurists believe that the above method of determining and selecting one of the two women; Husband and wife can not be required to pay the first (Isfahani, 1972). But consider some of the Sunni jurists that before the couple go to court because of a family dispute, Payment of alimony to the wife to court to determine, a woman cannot make her man pay alimony in the second request. But rather in the same way one agrees (Soukany, 2000, Naja and Khalid, 1972).

2-4-Dowry Wife

Marriage is no limit on the rights of women to assets ratio, he does not present and as before the marriage, she can call upon any of its assets are seized and take profit. The woman could be sued or go to court to answer, that Article 118 of the Civil Code says that women can be independent of any seized property that is going to do dowry as the property of a woman, So she can free them of all or part of your relative or any other person having a husband or entrust, Although it is gratuitous.

3- Works contract for the rights of the wife's failure to seize the couple's property

A financial right of women in Islam is of three kinds of property: 1 original and consistency; 2 Consequential, 3 support. The main and essential purpose of property ownership by women as well as men, consequently employment and economic benefits are enjoyed and an acquisition, it is explicitly mentioned. Consequential damages caused by the descent of property awarded to women and matters such as inheritance and the payment covers which the fiscal rights as heirs or next of kin are awarded to women. In this section, there is no difference between men and women in self- ownership But in some cases there are differences in how men and women can be seen in the stock due to heavy financial responsibilities which is obligatory for men, while women in exchange for financial benefits received, fees charged did not have a religious obligation. Property protection for women, Islam was created by the legislature at the same liability as to their wives and children not, and the right to receive and dowry, alimony and the necessities of life, the right to settle , pay example , a provision in the divorce, In the interim maintenance , and support Islamic rule in certain cases to avoid poverty than women who had predicted. The main difference between Islamic legal system with other legal systems in the recognition of property rights for women. The recognition of an advocacy, women are encouraged to marry and to found a family. Because of the financial interests of women within the family circle as a mother and wife is regarded more.

CONCLUSION

Couple financial independence and the right to manage their property and possession of Shia tenets and there is no doubt or dispute in civil law it is accepted in his 1118 article. According to article 1118 of civil law, independent woman who can seize their assets both going to do it and in accordance with the provision of civil law, women in economic and financial matters, full independence, And could result in any change to your personal property, Without the consent of the husband is required, Whether the property is acquired before the marriage or after that. In general it can be said that the couple's relationship, financial and otherwise based on Islamic law based on justice. Financial relationships of couples , women -owned and seized their property enjoys complete independence and the achievements of Islamic law should be respected ; Because until the twentieth century in most European countries women of human rights does not comprise at least and was among those arrested . Family relations department of financial and emotional problems because of the social and natural materials have been entrusted to the husband. But did not the president of authoritarian, It is a wise administrative department and the wife obedience and need permission to leave the house, so the woman is. In other cases, such as dealing with personal affairs of men, women are obliged to obey. It should be noted that women are entitled to the compensation rule saying things that makes her mandate. Divorce case is not unique, but a general rule is also applicable in other cases.

Recommend

1. Note that, unfortunately, in many cases women are not well understood or it does not matter Therefore appears that notification laws and the rights of women through paid media. Legal issues and support women in cases where a Shiie text of the narratives has found differences based on the correct legal principles.

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