

## Jurisprudential and legal review of possible conflicts in women's employment with matrimonial duties in Iran

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**Abstract:** The legal right of wife to work in the legal and jurisprudential texts is a right recognized. Nonetheless in some cases there are restrictions for some jobs, these limitations are minor and generally not rule out the right of employment. Marriage is a limitation of the right to work. Under Article 1105 of the Civil Code, the chairmanship of the family is the husband's characteristics. Then the husband must use his power to protect the health and strength of family, otherwise it should be said that he takes advantage of it and must be prohibited. As a result of the characteristics on the basis of Article 1117 of the Civil Code the husband can forbid his wife to work of any occupation or business that is incompatible with the interests of the family or his or her prestige. Definitely everything may cause impediment in the matrimonial duties should all be prevented as an axiom; however, since there is not any criterion in law to determine what cases are inconsistent with family interests and according to Article 3 of the Code of Civil Procedure the judge is bound by law to bring in the case according to Islamic reliable sources; hence, it is better that lawmakers prevent it from happening by enactment of a law due to disagreements among the jurists and lawyers with the analysis of Article 1105 by which given rise to counter pronouncements.

**Key words:** Conflict of employment; Women; Matrimonial duties

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### 1. Introduction

The wife's employment right is a right known in the constitution and other laws. One of the reasons that imply the permit of wife's employment is the following verse: "*lirrijāli naṣībun mimak-tasabu wa linnisāi naṣībun mimak-tasabna*" (Women, 32); to the men a share from what they have earned, and to the women a share from what they have earned. On the other hand, according to Article 1105 of the Civil Code, presiding the husband at the family is the characteristics of him, as a result of this characteristics and based on Article 1117 of the aforesaid law the husband can ban his wife from any profession or business incompatible with the interests of the family or her or his own prestige. Definitely Article 18 of the Family Protection adopted in 1353 was legislated to ban the husband from possible abuses of this right, and it had been subject to the court approval and demonstration of incompatibility that unfortunately the Article has not been brought forward in the law of Family Support adopted in 1391. Thus the judge is obliged by the absence of a legal article in this case under Article 3 of the Code of Civil Procedure relying on Islamic reliable sources to pronounce the verdict that can cause various opinions to be issued due to difference of opinion among the jurists on the legal analysis of Article 1105 of the abovementioned law about how

much the husband can interfere, for some affected by the famous theory of the jurists attach no broad scope to the chairmanship of the husband and believe in quitting the wife of her occupation in any situation, and some other believe that the scope of authority of the husband should be more limited. Now the question arisen is whether the court must issue a warrant of quitting the job in a mere belief of the husband founded on incompatibility with matrimonial duties? Or according to this view that the husband's chairmanship is not absolute (as it has caused difference of opinion among legal scholars over the analysis of the Article) the court has to pronounce a verdict? In this case, there is still the problem that how much is the judge's discretion in the amount of involvement and the scope of the chairmanship? Therefore it is better for the legislator, according to the difference of opinion among jurists, to prevent the issuance of conflicting opinions by legislating and defining the degree of involvement of the husband, and providing rules and criteria for the diagnosis of the inconsistency of employment with matrimonial duties.

### 2. Matrimonial duties

Once the bond of marriage has been properly contracted, it makes the rights and obligations for the husband and wife called "marriage consequences" by the jurists. The bad marriage creates no right and obligation at all; however, but as soon as the good one is contracted with all legal and

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religious valid circumstances, it makes the rights and obligations for couples (Civil Code, Article 1102). In Civil Code and other laws codified in this regard, the rights and duties of the spouses has been extensively studied. Financial independence, good companionship, shared housing, assistance of couples in securement of principles of family and upbringing of children and faithfulness of spouses are common tasks, and paying the dowry and alimony, nice behavior of the husband toward the wife, the right of copulation, the duties of the husband to the wife and condescension, obeying the husband's order are the wife's tasks toward the husband (Civil Code, Articles 1103 to 1106).

### 3. Wife's right to work in laws

Employment for women has been recognized as an axiomatic right. This right can be inferred from the following sources. In Article 1117 of Civil Code, it has been mentioned: "the husband can ban his wife from the profession or business that violates interests of family or her or his own prestige."

The husband is given the right based on this Article to prevent his wife's employment in any situation. So to speak, the husband has no right other than the aforesaid conditions to his wife's employment, consequently the 1117 of Civil Code shows that the wife has the right to work, and her husband in some conditions has the right to prevent his wife from working.

- Labor Code: In section IV of Chapter III of the Labor Code (Articles 75-78) some regulations are listed about the prohibition of employment of women in hazardous jobs, pregnancy and maternity leave. Thus the wife's employment in the Labor Code is certain and definite, there has been the rights of women workers in this law.

- Other laws: in addition to the abovementioned rules, the employment right and the rights of working women have been explicitly mentioned in other laws. These rules outlined consist of: the law of women's part-time service (approved in 1362), Article 32 of the Army Act of Islamic Republic of Iran (approved in 1366), Article 20 of the Act of employment regulations of the Islamic Revolutionary Guards Corps (approved in 1370), Article 20 of the Act of employment regulations of the police of Islamic Republic of Iran (approved in 1374), clause 5 of the single article of the Amendment Act of the Accession Act 5 of the clause of the conditions of selecting judges (of justice department) Act (adopted in 1374) etc..., and it is also pertinent to mention the policies of women's employment in the Islamic Republic of Iran adopted in 1371 of Supreme Council of the Cultural Revolution. In this law-bill, fairly appropriate provisions on women's employment are predicted. Article 2 of the law-bill states: "employment of women in positions of cultural, social, economic and administrative is the requirements and necessities of the realization of social justice and transcendence of community, and it should be taken seriously." In

accordance with the provisions of this law-bill, not only employment is the women's rights, but also it is the requisite of realization of "social justice" and "transcendence of community" (*Ārtidār*, 1379).

## 4. Restrictions on women's employment

### 4.1. General limitations

These overall situations are not specific to women or men. The list of these limitations consists of:

- The consistency of the occupation with Islamic laws (Article 28 of the Act of Employment) and Islamic standards (Articles 20-21 of the Act of Employment);
- The compatibility of the work with the public interests and the rights of others (Article 28 of the Act of Employment);
- The compatibility of the job with good morals and public order (Article 975 of the Act of Employment and Article 6 of the Code of Procedure of common pleas courts and revolution in civil affairs).

### 4.2. Limits arising out of sex

The law is forecasted specifically limits for female employment, in this regard some cases are pointed as follows:

- Prohibition of judgment
- Restrictions of employment in the armed forces
- Going out of the home with the husband's leave.

If working of women necessitates going out of the home, it needs the husband's leave. Most jurists believe that the wife is not allowed to go out without the husband's permission. Some jurists believe that it will be okay if the wife goes out without the husband's permission, on the condition that the husband's right of sexual relationships is not lapsed. Hence about working out of the wife according to the majority of jurists' view it requires the husband's permission (*Faḍlullāh*, 1382).

### 4.3. Family interests and the prestige of couple

In the family, if the wife's employment is inconsistent with the family interests or its members and or causes seditious acts, the husband can prevent her from working as the head of the family. The Civil Code states: "A husband can prohibit his wife from the profession or business violated the interests of the family or his own or her prestige." Nonetheless there is no criterion recognize this matter, it may be considered that the court must pronounce a verdict of quitting the job according to the husband's demand and the claim of discrepancy of the employment and doing the matrimonial duties, for as stated there has not been determined any range for the involvement and consent of the husband. Certainly there may be no job of contradiction with the prestige and honor of none of

the couple in itself; therefore, it may disagree with the interests of the family and children for instance due to the long absence of mother from the home (*'Alawīyūn*, 1381).

#### 4.4. Preference of wife's duties to employment

Pursuant to the verses of the Qur'an and hadith and historical sources, it could be said that women's employment in itself is not prohibited, but is accepted as a fact; however according to Islam point of view women are not responsible for the provision of family economy, the provision of financial and economic needs of them is regarded as the husband's duties. There have been many verses in this regard in the Qur'an (Women, verse 4). Still the preference of matrimonial duties to any other thing including employment is acceptable as an axiom. In fact it is essential for women to notice over to matrimonial duties more than any other thing to protect the family foundation and prevent the family center from collapsing. Actually, whenever the employment of women violates the matrimonial duties, quitting the work of the wife should be pronounced.

#### 5. The scope of men's authorities in prohibiting of women from employment

As mentioned, women's duties are preferable to their employment, but there is no contraindication for women's employment. In many international instruments, the equality of men and women in the political, economic, social and civil fields as well as employment has also been emphasized. The Charter of the United Nations has ordered governments to respect human rights and fundamental freedoms of men and women and their legal equality in practical dimension as well, after it had been considered the human rights and fundamental freedoms of men and women and their equality in theoretical one (Khamenei, 1375).

However the marriage contract makes some restrictions for couple that one of them is the employment restriction, the husband right to oppose with his wife's working is the auxiliaries of his chairmanship of the family appointed in Article 1105 of the Civil Code.

Under Article 1105 of the Civil Code: "being the head of the family in the relationships of the wife and husband is the husband's task." There are some questions in this regard. How much is the husband's scope of chairmanship and what items are included? Is it possible for the husband to oppose his wife's going out of the home? Is the husband able to take over his wife's commuting? If the husband has such a right pursuant to Article 1105 of the Civil Code, the wife will not have the right of working outside the home anymore. If the wife goes out of the home without the husband's leave, she will be rebellious and the burden of rebelliousness is up to her action. It is not allowable for the wife to go outside the home without her husband's leave if her going outside the home is against the right of the husband's

intercourse, but there is still a caution that the wife does not go outside the home without the husband's leave in any case even if it is not against his intercourse right. The frankness of this statement is showing that when the husband's leave is essential that the wife's going out is against his intercourse' right. At the following of it, although taking permission is known as something that it absolutely should be taken into caution. According to the response of some contemporary scholars to a fatwa it is emerged that they have doubt of the credibility of husband's leave in all cases. The difference of opinion among jurists has caused the difference of opinion among lawyers in the analysis of Article 1105 of the Civil Code. In this regard, there are two worth-mentioning views. Some have professed and expressed a vast scope to the husband's chairmanship affected by the jurists' famous theory: "from jurisprudential point of view, in principle, the wife's going out of the house for any purpose is to be done with the consent of the husband. So if she was not working at the time of marriage and the marriage was not to the condition of employment, the husband would be absolutely able to prevent his wife from working in any occupation outside the house" (*Hāirī Shāh bāgh*, 1379). Others believe that: "the wife can be employed in any job not against the matrimonial duties unless the husband recognizes that it is incompatible with the family interests and her or his own prestige under Article 1105 of the Civil Code, just only in this case he can prohibit her" (*Imāmī*, 1366) In contrast, some have considered limited scope to the husband's chairmanship: "the husband can prevent his wife from any behavior threatened the health of the family and inspect her commuting and socializing to protect the family. Yet he has no right to prevent her from socializing with close relatives, social duties or performance of religious obligations in his own sake and without a valid reason. The husband's authority is not along with pride and leadership over the wife; the purpose of the legislator is to protect mutually the interests of the family and prestige, and the authority given to the husband must be applied within these very affairs" (*Kātūziyān*, 1371).

Taking a careful look at Article 1105 of the Civil Code and comparing it to Article 1117 of the Civil Code, the correctness of the theory is confirmed; thus, Article 1105 of the Civil Code the only legal document of the chairmanship of the husband of the family could be limited only to matrimonial affairs; for the chairmanship of the husband of the family is more akin to a social duty than a personal right. As such the husband should apply his power to protect the healthiness and strength of the family otherwise it must be said that he is abusing his authority and must be banned (*Kātūziyān*, 1389). It seems the construction of "the spouses' relations" in this Article refers to the very meaning. Also if the wife's going out of the home at any time depends on the consent of the husband, the Article 1117 of the Civil Code predicted the right for the wife to work is less of importance anymore; however, there is no

concomitance between the employment and going out of the home, the matter of the wife employment proves mainly outside the home and indoor activities such as sewing and so on and so forth are of less conflicts with the husband's intercourse. So along with emphasizing this issue that it is morally better for the wife not to go out of the home without the consent of the husband, if there is a justified reason to go out without the husband's agreement, it will not necessitate the rebelliousness.

## 6. The criterion of the recognition in Article 1117 of the Civil Code

There is no clear criterion that what kind of job is incompatible with the interests of the family in law. As a matter of fact every matter that impairs the duties of marriage could be diagnosed as something incompatible with the interests of the family; however, the following items can be as the criterion and standard of the incompatibility of the wife's job with the interests of the family:

- Weakness foundation of the family: in accordance with Article 1104 of the Civil Code "the wife and the husband should assist each other to strengthen the foundations of the family and to bring up their own children." Then it is a common responsibility of the wife and the husband to consolidate and strengthen the principles of the family; however, if a career has chosen by the wife and it makes the foundation of the family weak for some reasons, the husband can be in opposition to it.

- Disorder in children's education: in accordance with Article 1168 of the Civil Code: "Children care is both a right and duty of parents." If the wife employment prevents her from the responsibilities undertaken by law, the husband can prohibit her from working.

-The incompatibility of the employment with the wife and husband's prestige: in Article 1117 of the Civil Code, it is said: "the inconsistency of the wife's work with her own or husband's prestige." A wife might choose an occupation with sheer material view and without regard to hers or her husband's social status. In this case, the man has the right to be in opposition to it. It is not feasible to distinguish between the dignity of man and woman; because after marriage, an inextricable bond is made between the interests of the wife and husband and also their reputation and prestige. So she cannot be indifferent to her husband's opposition due to this reason that her occupation is incompatible with her prestige and everyone has the right to make a decision about them.

Definitely there is no concomitance between the incompatibility of the career with the interests of the family or the wife and husband's prestige and legality of the same job. In other words, there may be a legitimate job, however, is incompatible with the interests of the family or the wife and husband. As the wife of a university professor or a religious scholar is a secretary of an office, or the husband of a well-educated wife is a peddler. Despite the fact that

these jobs are legitimate, they can commonly be considered as the ones incompatible with the wife and husband's prestige. Also, the presence of women in social activities is legitimate, but it is likely to interfere with the education of their children and therefore it will be against the interests of the family.

Of course the court is the authority to recognize this, it must be recognized due to good behavior, habits and customs of society and social and individual characteristics of the wife and husband whether the wife employment is against the family interests or not?(*Kātūziyān*, 1371).

## 7. Conclusion

The following legal texts which are often rooted in the Islamic law can be referred based on the restriction of prohibiting the employment of wives in conflict with marital problems: families headed by male, The following are the legal texts which are often rooted in the law, are: Male heads of families, couples duty in securement of the principles of family and upbringing of children, condescension, lack of responsibility of women in supplying a living for the household. Also, in accordance with Article 1117 of the Civil Code, the husband can oppose his wife's occupation through two conditions of "the discrepancy of the occupation with the families' interests" and "the inconsistency of the occupation with couples' prestige". There is not any clear standard in law on what occupation is incompatible with the interests of the family. However, the following cases could be considered as the standard and criterion of incompatibility of the wife's occupation with the interests of the family: The fragility of the foundations of the family, difficulties in training children, and the incompatibility of the wife's job with the couples' prestige. It should be noted that women's duties have a preference for their employment, and whenever the employment is an impediment of doing matrimonial duties, and when it is ascertained by the court, it must be ordered the job to be quitted; and the court that has the authority to recognize it that according to the difference of opinion between jurists and lawyers over Article 1105 of the Civil Code in relation to the satisfaction of the husband an appropriate verdict must be pronounced. In order to prevent the diversity of views, it is necessary that the legislator codifies a pertinent legislation. The author's view is also in accordance with the minority group of jurists and those lawyers that do not believe in the requirement of husband's consent in all cases. This means that if there has been no disturbance with the employment of the wife in doing matrimonial duties and bringing up children, the husband should not abuse the right that law has provided for him under Article 1105 of the Civil Code.

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