

## Examination and analysis of the woman rights in Iran in the family support law passed in 2012

Haleh Moghbelie Hanzaie <sup>1,\*</sup>, Meysam Taram <sup>2</sup>

<sup>1</sup>*Department of Law, Bandar Abbas Branch, Islamic Azad University, Bandar Abbas, Iran*

<sup>2</sup>*Department of Law and theology, Shahidbahonar University of Kerman, Iran*

**Abstract:** Since family is the first authority or division which is being settled and being called to order due to the existence of a woman, it is possible to realize the importance of a woman to constitute the main pillar of the society. In Iran, family support has always been taken into consideration by the lawmakers. Due to this issue, by considering the existing defects of the laws in the domain of the family and in order to actualize the 21<sup>st</sup> institute of the constitution of the Islamic Republic of Iran which according to that the government is bound to guarantee the rights of women by observation of the Islamic codes, family support act which is being drawn up in the year 2007 and was passed in the year 2012 by the Islamic Consultative Assembly. In this act, in order to administer the woman rights the tripartite cases of coercing the registration of the temporary marriage which is being mentioned in the article 21<sup>st</sup>, is a step forward in order to register and formalize the marriage settlement, but there hasn't been a macro and realistic view toward the subject of the marriage portion and just a step is taken toward reducing the amount of court cases. The *raison d'être* for the expensive marriage portions includes two issues: Firstly, it is a source for earn a living for the divorced woman after the divorce and secondly it is a leverage to put a spouse under pressure to agree with divorce which is the exclusive right of the spouse.

**Key words:** Woman rights; Family; Family support law

### 1. Introduction

When it comes to the woman rights, it contains rights which a woman because of being a woman holds and/or is deprived of them, so that part of the regulations which is not influenced by the sexuality of the individuals and is the same both for the men and the women cannot be inserted within the domain of the woman rights (Ebadi, 2005). The first law which was specifically relevant to the institute of family was being passed in the year 1967 under the title of "Family support law" that was being substituted by a law with the same title which was being passed in the beginning of the year 1975 (Bahman), which after the Revolution of 1979 in Iran some articles in the family support law which were contrary to the Islamic jurisprudence were annulled (Safayi and Emami, 2013) and finally in the month Tir of Persian calendar the act of family support which was being proposed by the judicature of Iran was being passed in the government assembly under Dr. Mahmoud Ahmadinejad and was being sent to the Islamic Consultative Assembly and finally was being legalized and at last this controversial act was being ratified in the last month of the Persian calendar (Esfand). The term "support" in the new law of the family has a specific meaning and conception. This word evokes supporting the woman and child and it was being arranged to support the

women and children but unfortunately this story didn't happened. Of course, due to this reason that the regulations about the family rights in our country have originated from the Divine law of Islam, so we are faced with the Islamic jurisprudential and legal limitations in our regulations and like European countries cannot enjoy the complete equality of woman and man. The new family support law doesn't have a specific approach and inclination toward the role of the woman in the family and in society since this law doesn't embrace the comprehensive regulations toward the woman rights but it is merely a family support law and its diverse articles are trying to consolidate the institute of the family and decrease the number of divorce cases and the majority of the law is relevant to the rules of pleading.

### 2. Privileges of the new family support law in alignment with supporting the women rights

#### 2.1. Prediction of obligation for the attendance of female legal advisors

One of the positive points of this new law is acceptance of women in the capacity of judgment and make much of their views more than before since according to the second article of the new law, the consulting judge should expertise and state their views during three days after the conclusion of the trial in well-reasoned and written way about the

\* Corresponding Author.

court case or cause of action and insert the circumstances in the case and the composing judge should refer to the view of the consulting judge in the written verdict and in case of any disagreement or mismatch reject it by reasoning, since a woman is more familiar with the problems and obstacles of a family and realizes them. But in this respect the male judge composes and issues the verdict.

## **2.2. Claims handling without formalities**

According to the article 8th of this law, claims handling in the family court is being performed by lodging the complaint at the court and observing the formalities of the civil procedure code is not necessary since judging formalities in the civil issues is incongruent with the familial lawsuits which involves the necessities of speed and fluency and accuracy in a multiplied way and the subject that lack of necessity spawned that the judge without any care for the violation of their verdict in the rehearing authority, due to its nature observe what they consider as advisable and achieve their aim as soon as possible (Hedayatnia, 2007). Since the woman or children usually are unable to plead their case themselves professionally and due to feelings and sentiments are unable to measure and advance their claims, so the civil procedure code in the domain of family should be simple and economical since the nonfinancial aspect in the familial court cases is dominant and the material value of these claims in comparison with the emotional harms is negligible (Bodaghi, 2009).

## **2.3. Territorial Jurisdiction**

According to the principle of legitimacy, the claim or court case or suit should be initiated in the residence of the defendant (Shams, 2006) but the new family support law toward providing facilities for the wife in the claims and familial cases allows the woman to bring action against the defendant on behalf of him although this facilitation causes the welfare of the woman but according to what principle her rightfulness and the cruelty of the husband is well-settled that a man (or husband) can be bound to travel to answer for the claim of his wife to her settlement which is not determined to be far from him to what extent and undergoing the diverse costs out of it? (Roshan, 2008) Also, according to the article 14 of the new law while one of the spouses be a resident abroad, the court of the spouse who is the resident of Iran is the competent court. If the spouses are the residents of abroad but one of them is the temporary resident of Iran, the court of the Iranian resident spouse has the competence and if both of the spouses are the temporary residents of Iran, the court in the temporary residence of the wife is competent to inquire. Competence of the court which is in the temporary residence of the wife which is being considered in the assumption that both of them are the temporary residents of Iran is against the general regulations about the territorial

competence of the court and is based on the thoughts which are about supporting the woman.

## **2.4. Establishment of family counseling centers**

The policy of judicial entrustment is one of the major policies in the realm of managing the judicature which has received consideration on behalf of the lawmaker in this law. The realization of this purpose is the family counseling centers in the article 16. The concept of judicial entrustment doesn't refer to entrusting the obligations of the judicature and the court in Iran, but it means that non-judicial issues or issues that do not have a judicial entity will be entitled and entrusted to the authorities other than the courts until the courts can get to their inherent duties with peace of mind and a free hand (Shah Heidari, 2008). According to this article at least half of the members in each family counseling center should be chosen from among married and qualified women. In this case, women who are applicant for divorce or the settlement of dispute with their husbands and are being referred to the family counseling centers feel more confidence and peace of mind psychologically.

## **2.5. Obligation to register the temporary marriages contingent upon some conditions**

In the colloquial (not legal) language, temporary marriage is called formula and the concubine means a temporary wife (Ebadi, 1999). In advance of the family support law in the subject of registering the temporary marriage, we were faced with a legal silence and abeyance and this silence and lack of coercion on behalf of the lawmaker in the past to register the temporary marriage led to this story that lots of the temporary marriage cases were not being registered in the notary offices and the women in case of pregnancy faced serious and grave problems to prove the descent of their children. By considering the multiple problems concerning the temporary marriage, the lawmaker finally came to this conclusion that the registration of the temporary marriage in the formal notary offices is necessary just in three cases: 1- In case the marriage doesn't lead to pregnancy. 2- In case the husband and wife have come to an agreement to register it. 3- In case the registration of their marriage is being conditioned while finalizing the marriage contract. The antithesis of the above-mentioned obligation in the mentioned cases is indicative of this enterprise that registration of the temporary marriage out of the domain of the above-mentioned conditions is not only unnecessary, but is not worthy of undergoing a legal punishment which is being fixed in this law as well. In fact, if the purpose and intention of the lawmaker to codify this article is to set the situation of the temporary marriage in order and supervising its results and effects, lack of predicting the above-mentioned items is a sign of an undeniable weakness and frailty on behalf of the lawmaker and the relevant legal and legislative advisors in this area

similar to lack of concern for other frailties and faults and the discrepancies which are being posed in this text (Zamani darmazari, 2012).

### **2.6 Set a moratorium or deadline for the validity of the declaration of the irreconcilability of the spouses after submitting it to the marriage registry**

According to the frailties which exist in the declaration of irreconcilability of the spouses which was being passed in the year 1997, the article 23 of the new family support law has ordained that:

If the spouse who is the divorce applicant do not submit the declaration of the irreconcilability of the spouses which is being intimated to him during three months from the date of communicating it to the formal notary office and also if from the date of submitting this certificate he won't attend the notary office and/or do not submit the required documents, the issued certificate will be null and void. In this manner, by setting and finalizing a moratorium or deadline for the validity of the declaration of the irreconcilability of the spouses, after submitting it to the notary office, defects of the previous law in this subject will be obviated and no longer the husband will be able to misuse after submitting the declaration of the irreconcilability of the spouses and not to attend the notary office for concluding the divorce contract or refrain from the fulfillment of the divorce contract and leave his wife in limbo for a long time and uses this weapon to impose his view on his wife.

### **3. Registration of divorce contingent upon fulfillment of the woman rights**

According to the article 29 of the family support law, while the court passes a sentence of divorce, based on the conditions which are inserted in the marriage deed, which are called marriage contract stipulatio, a decision should be taken to clear the confusion about dowry, marriage portion, and the alimony of the wife and also the living expenses of the children or even the embryo in the womb of the wife whom has not born yet. Also this article refers to the civil law article number 336 as well and poses that while somebody do something for somebody else, they should receive their fee, unless it will be proven that they are inclined to do that job for free; otherwise they should receive their fee or ratable value. Formerly according to the content of the 6<sup>th</sup> note of the amendment regulations concerning the divorce, which was being passed in the October-November of 1992 it was being concluded that one of the conditions for asking for the rent value on behalf of the wife is that the divorce request shouldn't be on behalf of the wife. But according to the article 8<sup>th</sup> of the 58<sup>th</sup> decree in the last-passed law of the family support, the amendment law for the divorce, which is being passed in 1992, (except for the second article of the 6<sup>th</sup> note), is being voided and it can be concluded that in any case whether the

divorce be according to the request of the wife or not, by considering all the possible choices the possibility of claiming the rent value on behalf of the wife is impossible. Also, today the decree to pay the marriage rent value or ratable value besides the monetary conditions under the marriage contract are part of the conditions for the property conveyance to the half amount of the husband's property, while formerly according to the content of the 6<sup>th</sup> note, the relevant private bill was impossible to conclude and in case of existence of monetary conditions under the marriage contract which are in favor of the wife the court couldn't decree to pay the rent value under the marriage contract (Safai'I and Emami, 2013).

### **3.1. Fostering and visiting the child**

One of the problems that family courts are facing it for a long time is fostering and visiting the children while the parents are being divorced, and since the children have strong emotional attachment to their mothers and preventing the usual visiting in a common way is being considered as a powerful leverage to tease and kneeling the women, the article 40 of the new law by intensifying the premises and the relevant punishments and exercising some innovations in it has ordained that: "anyone who refrain from enforcement of the court judgment concerning the fostering the child or preventing its enforcement or prevent from reclamation of the child based on the claim of the beneficiary and by the decree of the court which pronounces the first judgment or decree will be arrested." Also, concerning prevention of the parents to visit their child after divorce or on the verge of divorce, the article 54 of the new law has ordained that: "while the fostering parent prevents from fulfilling their determined responsibility or prevents the rightful persons to meet the child, for the first time they will be sentenced to pecuniary level eight and in case of repetition they will be sentenced to the maximum penalty. Of course by considering the amendment in the Islamic penal code and the subject that in the Islamic penal code the level eight punishment or penalty is so insignificant, unfortunately this punishment is not enough and paves the way to prevent the possibility to meet the child. Besides, in Twelvers jurisprudence the subject of meeting the child by considering its emotional and sentimental effects has received attention (Najafi, 2013). In this area the article 41st of the new family support law has ordained that while the court judges that for meeting and fostering the child one of the tripartite violations has occurred it should take the advisable decision to support the privileges of the child. Deciding the supervisor for the foster parent is a new action which is being predicted in the new law and can be fruitful. These violations are as the following:

If the agreements which are being set between the parents concerning meeting, fostering, and taking care of the child or other issues which are

relevant to the child while divorcing from each other or while living in separation are against the advisability of the child or the fostering parent whether mother or father or a third person refrain from fulfilling the requirements of fostering, totally or partially, or the fostering parent or person prevents the child whom is under their fostering from meeting the beneficiaries such as father, mother, or/and other relatives and the child's next of kin (Safai'l and Emami, 2013).

### **3.2. Determining the salary, responsibility, and pension for the wife in case of remarriage:**

According to the old regulation, women who after the death of their husbands received their pension, in case of remarriage their pension would be cut. This goes while since the husband before passing away had been receiving his premium for many years, it is the right of the woman to receive her husband's pension whether being widowed or being remarried. According to the article 58<sup>th</sup> of the new family support law, such women in case of remarriage again can take action to receive the pension of their deceased husbands.

### **3.3. Penal punishment of avoiding maintaining the alimony and devoting the alimony right of the children born through artificial insemination and the children under custody:**

In Twelve's jurisprudence for a man who doesn't pay his wife's alimony or subsistence right in general there are traditions that are indicative of the husband imprisonment until paying the subsistence right (Tousi, 2008). In this area in the article 53 of the new law besides intensifying the punishment for the denial to maintain the alimony, (which is imprisonment from above six months to two years and amercement for more than twenty million Rials to eighty million Rials), it is stipulated to the annulment of the execution of penalty in case of renouncement on behalf of the plaintiff. Thus, the new law is better than the previous regulations. Also, according to the 6<sup>th</sup> note of the mentioned 53<sup>rd</sup> article, while the husband avoids paying the subsistence right to his wife whom according to the law and based on the right to withhold avoids the obedience, or avoids to pay the subsistence right to the children which are born through artificial insemination or the children whom are under his custody, he will be punished for the prescribed sentence that is being ordained in the article 53<sup>rd</sup>.

### **3.4. Concerning the faults in the new law about women the following items are worthy of mentioning**

1-Weakening the civil and legal sanction for the position of marriage portion in the new law and the predictable overthrowing of the women rights according to the article 22<sup>th</sup> of this law:

When the marriage portion in the marriage occurrence is equivalent to one hundred and ten (110) full Bahar Azadi gold coins or its monetary equivalent, receiving it is subject to the regulations under the article 2<sup>nd</sup> of the law concerning the execution of monetary convictions. If the marriage portion is more than this amount, concerning the surplus just the solvency and affordability of the husband is the criterion its proof is upon the wife. It means that the domination of the marriage portion under affordability in the financial and legal relations between the spouses, even by considering the assumption of agreement on the marriage portion to be on demand and inserting it in the marriage deed and fading the above-mentioned agreement and the actual abatement of the practical validity of the marriage deed as an official document (Zamani darmazari, 2012) Although the result of such an article may lead to the release and liberation of some of the marriage portion prisoners and thus a decrease in the growing flow of such prisoners but if we want to look at this issue from another perspective we should say that this decree can astronomize the value of the marriage portion as well. Up to now, young men who have been on the verge of marriage due to the fear from marriage portion punishments have taken a series of observations into consideration or in spite of fear from imprisonment they have accepted the astronomical cost of the marriage portion. Now that there is no fear for imprisonment for the marriage portion which is more than 110 (one hundred and ten) Bahar Azadi gold coin, this may lead to competitive nesses and familial emulations and by considering the assumption that nobody has received or paid the marriage portion, marriage portions that worth more than 110 Bahar Azadi gold coins come into vogue. On the other hand, fear from prison is an obstacle confronting some baseless divorces; so, from this point of view this law may lead to an increase in the number of divorces, specifically by paying attention to the statistics which are being issued recently in Iran that based on it the number of emotional divorce cases among Iranian spouses is so widespread and this law may help to finalize the divorce cases. When the marriage portion is on demand, the burden of proof for inability to pay it is on the husband. When the criterion is the solvency of the husband, it means that the burden of proof for the marriage portion is being imposed on the woman.

### **3.5. Lack of predicting the necessity of submitting the un-pregnancy certificate on behalf of the forensic medicine**

According to the note 6 of the former private bill, spouses should receive the certificate for the existence or inexistence of embryo on behalf of the qualified doctor the relevant laboratory and submit it to the court; but according to the article 31<sup>st</sup> of the new family support law, submitting the medical license concerning the existence or inexistence of the

embryo to register the divorce is not necessary unless the spouses agree on this action. Pregnancy or unpregnancy license by consensus of the spouses on the occurrence of the pregnancy has the following legal consequences:

- 1-The period of divorce for a pregnant or unpregnant woman is different. It means that the period for an unpregnant woman after the occurrence of divorce is three months of purity when not menstruous but the absolute period of the pregnant woman till the time of delivery may last up to nine months and in this manner, till the time of delivery in the voidable divorce the husband will not have the right of withdrawal and up to that time apparently they shouldn't register their divorce.
- 2-The period of residence for the divorced wife in the common residence and the alimony of the menstrual period in the revocable divorce and absolute dissolution in case of pregnancy or unpregnancy is different: the alimony period for the pregnant woman in the revocable divorce and absolute dissolution is up to the delivery time but the residence of the woman in the husband's residence up to the end of menstrual period is just being determined in the revocable divorce. Of course providing the residence separately and outside of the ex-husband's residence in case of absolute dissolution and the pregnancy of the woman is part of the alimony for the aforesaid woman and in this area there is no doubt.
- 3-In addition to the above-mentioned consequences, the existence of embryo can be effective in the return of the divorced wife to the family and preventing its dissolution specifically in the revocable divorce and support the preservation of the embryo.

#### **4. Silence of the new law concerning the remarriage and the employment of the wife**

In the year 1974 two decrees, 16 and 17, of the family regulations were about the remarriage which the 16<sup>th</sup> decree stated that remarriage of the husband without taking permission from the first wife is forbidden and the 17<sup>th</sup> decree was the penal sanction of the 16<sup>th</sup> decree. In the year 1984 the Guardians Council of the Islamic Republic of Iran considered the 17<sup>th</sup> decree against the sacred law of Islam and from that time up to know no definite law or decree has got into this category. But since the cases of polygamy in this decree is against the 16<sup>th</sup> decree of the family support law which was being passed in the year 1974, it wasn't definite and as a result of its enactment there would be an increase in the number of polygamies and the misuse of the husbands the aforesaid article was being removed after lots of criticisms and in the decree 58 from the final text that has mentioned the repealed regulations there hasn't been any mentioning of the family support law number 53. Thus, the fate of the family support law in the area of polygamy is severely under an ambiguity: while no text is

existent that repeals it, the courts refrain from its complete fulfillment. Apparently it is because the permission for remarriage on behalf of the court is necessary and has no exact and careful attention to the financial affordability of the husband but do not observe other conditions of the 16<sup>th</sup> decree which is an added limitation besides the canonical regulations of Islam. On the other hand, the Guardians council of Iran has declared the criminal sanctions of these regulations as non-canonical (Katouzian, 2013).

#### **5. Conclusion**

Passage of the family support law passed in 2012 in the legal book of deeds in our country which is claimant to drawing up the accomplished Islamic legal regulations based on the dynamic Shiite Divine law has some positive and worthwhile points to prevent the aftermath of divorce for women. In the decree 2<sup>nd</sup> of this law the necessity of attendance of the female legal advisor in the court is being emphasized since a woman is more and better aware of the problems and obstacles of a woman in the family and realizes them. Also, in the article 16 a discussion about the family counseling centers beside the family courts is being mentioned and enjoying the psychotherapists, psychologists, and the social workers beside the legal or judicial cadre is considered as necessary and urgent and it has been emphasized that at least half of the members of the family counseling centers should be chosen from among women. The other positive point of this law is the article 12 that according to it in the family court cases and issues which is relevant to the spouses except for the cases about claiming the immovable marriage portion the wife can bring action against the defendant in the court which is located in the residence of the husband (defendant) or her residence. Lack of abiding to register the temporary marriage in the notary office except for the tripartite cases which are being ordained in the decree 21<sup>st</sup> of the new law is indicative of this enterprise that registration of the temporary marriage in the notary office out of the domain of the aforesaid conditions is not only necessary, but it will not be worthy of undergoing the ordained legal punishment concerning this issue in this regulation as well and this is indicative of the undeniable weakness of the lawmaker and the relevant legal and juridical advisors in this matter. Of course this private bill concerning the children whom are being born out of a concubine has some positive results. In fact, the lawmaker before the child birth has been concerned about determining the identity or descent of the child's father as if the child's identity is being determined in any case.

#### **References**

- Bodaghi, Fatemeh., (2009) "Practice of the Court in the Family Court", Tehran: Mizan Publications.

Ebadi, Shirin, (2002) "Rights of woman in the regulations of the Islamic Republic of Iran.", Tehran:Nashr-e-Danesh Library.

Katouzian, Naser., (2009) "Family civil law", Terhran:Enteshar joint stock company in association with Bahman borna Publications.

Najafi, Mohammad Hasan,(1994) "Javahir-al-kalam",Vol.31.,Beirut:Institute for the revival of Arabic heritage."

Tousi, Mohammad ibn Hasan, "Explanations on the Imamah jurisprudence", A research done by Behboudi, mohammad bagher, Tehran:Al maktab almortazaviah Publications.