

The jurisprudential basis of wife's alimony in the Civil law of the Islamic Republic of Iran

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Abstract:

Providing the cost of daily living is one of responsibilities and tasks of marriage. In fact, alimony is one of the main commitments in relationships of couples. The civil law describes alimony as housing, clothes, food and furniture that is commensurate with the status of women. This paper aims to find out and investigate the jurisprudential basis of wife's alimony in the civil law of Islamic Republic of Iran. Library-descriptive research method is used through Arabic and Persian legal-jurisprudence resources and by visiting the seminaries and polls and religious opinions of Grand Ayatollahs. The present study also investigates the jurisprudential basis of wife's alimony in the Quran, hadith, consensus and wisdom. The results suggest that, by marriage and compliance of woman, the husband is obliged to pay alimony with and this obligated is removed from the husband by woman's disobedience, apostasy, dissolution of the marriage or death of the husband. The wife's amount of alimony is evaluated by her state and value.

Key words: Law, alimony, marriage, disobedience, law

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1. INTRODUCTION

Marriage rises various economic, legal, social and personal effects for the couple and in this situation the parties receive rights and obligations to each other. This means that each one receives the rights of the contract and is required to hold some responsibilities. Wife alimony is one of the financial duties of husband after marriage starting by marriage and married life and guarantees family independence and shows male supervision on the smallest and yet most important social institution of humanity. Maintenance is among the most important issues of family law which is effective in all stages of life both during marriage and after its dissolution, in relation to the spouses and children, and other relatives.

Wife alimony is among the issues cited in jurisprudence and scholars and researchers have discussed it in their works and writings. For example, Najafi (1983, p. 301) asserted that “it is clear that alimony is not obligatory itself unless through one of the three married ways of marriage, relatives and property, and there is consensus in this respect”. Also, Ameli (1988) said that “alimony is necessity for the wife whether she is Muslim or infidels and free” (p. 454). God Almighty has mentioned the matter in the Holy Quran (Surah al-Talaq) which shows the great importance of the issue. Since the civil law of Islamic Republic of Iran covers many issues including the law of wife maintenance, many articles of the civil law are in line with legal texts. For example, the civil law describes wife alimony as housing, clothes, food and furniture that is commensurate with the status of women. It also includes servant if a woman is used to having a servant or she needs one due to illness or deficiency. Of course, there are also other issues regarding wife's alimony in civil law such as disentitling wife's alimony or forcing husband to pay alimony or its enforcement and these issues have juridical roots. In this article, we discuss these issues and their juridical principles.

In Iranian law and jurisprudence in Islam, the Koran and Sunnah, the man is responsible for alimony payments and there is disagreement among scholars in this regard; however, scholars disagree on minor issues in this case. Therefore, given that it is still a burden on the court of our country and due to its practical use, this study investigates and challenges the jurisprudential basis of wife's alimony in the Quran, traditions, wisdom, consensus and other evidence as the basis for Iran's Civil Code.

2. DEFINITIONS AND CONCEPTS

2.1. Alimony: Alimony is a noun meaning charity and something that man uses for charity. Etymology scientists have mentioned different roots for the term "alimony". Some scientists define alimony as giveaway. Al-Khoury Al Shartouny al lubnani (1980, as cited in Rampuri, 1984) defines the word as something that a man spends for his wife. Two meaning are mentioned for alimony in Persian:

- ❖ What is used for charity and forgiveness.
- ❖ What is spent for the cost of living of women and children, and their life needs (Moin, 2006, p. 477)

Ja'fari jurisprudence jurists often define wife alimony as "food, clothing, housing, etc." (Helli, 1998, p. 319). Article 1107 BC Amended in 2001 considers wife alimony as all the reasonable needs and situations appropriate to women and decrees: Wife alimony refers to all the reasonable needs and situations appropriate to women includes housing, clothes, food, furniture, health care costs and servant if a woman is used to having a servant or she needs one due to illness or deficiency.

2.2. Disobedience and Disobedient: Incompatibility between husband and wife (Jorjani, 1954). In terms of jurisprudence, disobedience refers to the lack of disobedience to duties of each

other by husband or wife. Disobedience of man is to refrain from sleeping with his wife for four nights and refusing to pay her expenses which gives the woman the right to force him to do the mentioned tasks by the force of law. Disobedience of woman is the lack of obedience to her husband. According to the Quran, if a woman fears of her husband's rebellion, it gives the husband the right to refrain from giving alimony (Surah Nesa, Verse 128). Nashzeh (disobedient) is a woman who has betrayed her husband's rights and the signs of such a woman are that her behavior is not kind with the husband and refuses to obey the legitimate demands of the husband.

2.3. *Mahr or dower:* woman's dower (Meshkini, 2004). It is a property that man is in charge of has to afford due to non-adultery penetration in marriage. Different kinds of dower include:

- a. *Mahr alsonah*: It is the Mahr that the Prophet (PBUH) gave to his wives (500 dirhams).
- b. *Mahr olmasal*: The woman's mahr which is the same as another woman from that clan and are the same in every way especially in the father's tribe in factors such as faith, beauty, wealth, wisdom, interest, fame and virginity.
- c. *Mahr olmosama*: It is a certain kind of dower that its value is specified in the marriage contract.
- d. *Mahr almote*: It is the mahr that when the husband has livestock, garments of fine (fine) or a horse that's worth ten shekels of gold, he gives his wife 10 gold ounces, and if the husband is poor, he should give her a gold or silver ring. If he is average in terms of wealth, he should give her five shekels of gold (Tahanavi, 1996). If the alimony is not mentioned in the contract and the husband divorces his wife before the sexual intercourse and determining the wife's alimony, the wife deserves *Mahr almote* and if he divorces his wife after the sexual intercourse, she deserves *Mahr olmasal* (Article 10, Civil Law).

3. THE NATURE OF A WOMAN'S RIGHT TO ALIMONY

The purpose of a woman's right to alimony or its nature is to see whether the woman owns what her husband gives her as alimony or just the permit of profit is given to woman and she can use it (Ameli, 1998). If the woman owns something which has received as alimony, she can do whatever she like to do with it such as selling it or giving it to someone. However, if she is given permission in profit, she does not have the right to such possession without the permission of the owner.

To recognize a woman's right to alimony, we must refer to the husband's and common law which is a commentator of will. Islamic jurisprudence can also help us in this regard since it is in accordance with custom and usage. To determine the nature of a woman's right to alimony, few should distinguish between unusable properties, which are destroyed by their benefit) and other properties. In the case of consumable goods such as foods, beverages, perfumes and soaps, the woman can be considered as the owner according to the husband's will, common law and opinions of Shi'ite jurists. If a woman has been saving and holding part of the property, she can make any changes in it.

However, the used properties which are the properties that do not destroy by their benefit such as housing, furniture, clothes, shoes and so on are not alike in terms of husband's will and common law. In the case of housing and furniture, the husband usually just leaves them for wife's benefit and as mentioned by the Shi'ite jurists, the intention is benefit not owning. So, these properties are not owned by women and the husband can change or sell them at any moment.

Meanwhile, it seems that in our era under common law, giving such properties to the wife gives her ownership. The husband's will is usually giving the ownership of these properties to the wife, unless the husband explicitly expresses his intention not to confirm wife's ownership. The woman's

possessions on the property owned as alimony are considered abusive when they are against conventions or against the husband benefits that is forbidden and liable to civil liability (Article 132, Civil Law).

4. ALIMONY IN QURAN VERSES

Some verses of the Quran clearly indicate the necessity of alimony and others imply it with the help of narratives and interpretations. In the following, verses that indicate more obviously are brought up:

1. “Either you retain her on reasonable terms or release her with kindness” (Surah Baqarah, Verse 229)

In the above verse, God suggested two solutions to men: keep women on reasonable terms or leave them kindly. Keeping them good entails costs of their lives and leaving them kindly requires supporting them financially on special occasions.

2. “And their nutrition and clothing must be upon the father according to custom and usage (on a reasonable basis); No soul shall have a burden laid on him greater than he can bear” (Surah Baqarah, Verse 233)

After expressing some divorce laws in the last verse, the above verse is about women who are divorced and pregnant and it has obliged fathers to pay food and clothing to their children and wife. Sheikh Tusi in interpreting this verse says: The meaning of this verse is that the father of the child is obliged to provide food and clothing for his child's mother, who has divorced her, until the mother gives milk to the child (Tabatabaai, 1983).

3. In a verse, after allowing men to have four wives, they are invited to have justice in treating women and men are addressed: “If you fear of not treating women fairly and do your duties, rely only on one woman or a slave. This is not oppression and is closer to justice”. Therefore, the oppression of

women is prohibited in whatever form and one form of it is non-payment of alimony.

4. Men are ordered the surah "Nisa" to treat their wives kindly (Surah Nisa, Verse 19).

5. "Do not be the one who drives them out of their houses, nor should they themselves leave" (Surah Al Talaq, Verse 1).

Men are ordered not to drive out divorced women from their homes until 40 days after the divorce and women are also ordered not to go out of the residential houses at that time. The above verse indicates the necessity of men to provide housing for their wives in that time. Of course, it is clear that women deserve housing at the time of marital life.

6. "So when they (the wives that you have divorce) have reached their waiting time, then retain them with kindness" (Surah Al Talaq, Verse 2).

Sheikh Tusi in interpreting this verse says: The verse dictates that some at the end of waiting time treat them kindly see them famous and pay their alimony including clothing, housing and get separate after the end of waiting time.

7. Lodge them where you lodge according to your means, and do not harm them in order that you may straiten them; and if they are pregnant, them spend on them (give their alimony) until they lay down their burden (until birth)" (Surah Al Talaq, Verse 6).

The above verse indicates the necessity of alimony for divorced pregnant women. When such divorced woman is entitled to alimony, the wife who still has the marital bond and is the family member will certainly be entitled to alimony. If we consider the above verses carefully, we will certainly conclude that these verses generally and clearly indicate the wife's alimony obligation.

5. ALIMONY IN TRADITIONS

Many traditions imply wife's alimony obligation and for the sake of brevity, a few narratives are mentioned.

1. Imam Sadiq (AS) said: A woman came to the Prophet and asked about husband's right on the wife and heard the answer. Then, she asked about the wife's right over the husband asked. The Prophet (pbuh) said: Woman's right on her husband is that the husband covers her nudity and the feed her hunger and forgive her when committing a sin (Ameli, 1998).

2. Hend, the wife of Abu Sufyan came to the Prophet and said: Abu Sufyan is a stingy man and does not give enough charging to me and my children, unless I took it secretly. Do I commit sins? The Prophet (pbuh) said: take property from him to the extent that suffice you and your child (Bokhari, as cited in Motahari, 1994).

3. In farewell pilgrimage sermon, Prophet said about a woman's right on the husband: Men must provide food and clothing for their wife with kindness and competence.

4. Imam Sadiq (AS) narrated from the Prophet (PBUH) that: A man is cursed who loses his family and dependents which means that he violates their rights and do not provide them with cost of living.

5. The Prophet (PBUH) said: A faithful Muslim follows customs of God. If God gives ease to his life, he does so and if he has stenosis, so does he.

Such narrations indicate that the man is required to meet the urgent needs of his wife as alimony. The amount of alimony deserves the dignity of the woman and the man. However, if a man has a low material condition and has a wife with a privileged social status, he should know that God's obedience requires that he should make an attempt to meet the needs of such a famous wife in a level of her dignity. The important point is that many traditions imply that the amount of alimony

should not be a lavish example of divine blessings (Ameli, 1988).

6. ALIMONY FROM THE PERSPECTIVE OF CONSENSUS AND REASON

The necessity of alimony is agreed by all scholars. In addition to jurists, public scholars have also accepted the necessity of alimony and there is no dissenting opinion in this regard. Given the clear and well-documented degree of consensus (Quran and Hadith) and for the sake of brevity, we declined to mention the views (Katouzian, 1992).

The above reasons (verses, traditions and consensus) are agreed by all Muslims and Sunnite and Shiite scholars have cited these reasons but the public jurists have mentioned two other reasons: reason and analogy. Although the analogy also refers to a kind of wisdom, public jurists have mentioned it separately and analogy is also considered as an independent reason in terms of the science of principles (Tabatabaai, 1983). We also examine them separately.

Conceptually, it is argued that as the wife is locked up to home for the husband due to marriage and is deprived to go out of the home, as well as the acquisition and gaining income, so the husband should provide her alimony (Abouzohreh, 2008). In addition to the establishment of Islamic law based on justice, Islam did not even agree to allow couples to have an agreement that leads to injustice and conflicts with reason (Motahari, 1999).

7. REASONS FOR THE OBLIGATION TO PAY ALIMONY IN TERMS OF CIVIL LAW

Examples of wife's alimony are mentioned in Article 1107 BC which include:

Housing, clothing, food and home appliances which are traditionally commensurate with the status of women and servant in case of wife's period or her need due to illness or body defects. The civil law has not considered husband's financial statue concerning the obligation servant except for the wife's sickness which requires a servant. As the woman considers husband's financial statue when giving a positive answer to his proposal, she should prepare herself to adapt to the husband's economic situation. Also, the custom does not regard a servant among the necessities of life.

Due to changes in human life and especially the human race needs, instances of alimony can not be confined to in the 1107 BC Article. According to lawyers, "What is important is that the husband should earn the living for his wife and children as the head of the family. Lifestyle changes create new needs each day and these needs can not be confined within a certain framework and the judgment should be left for the custom (Katouzian, 1992). The civil and criminal enforcement of alimony is mentioned in the following.

7.1. Civil enforcement of alimony

Civil remedies of alimony are seen in Articles 1111, 1112 and 1129 of the Civil Code and paragraph 2 of Article 8 of the family support's new law. According to Article 1111, the wife can go to court if her husband refuses to give her alimony. In this case, the court determines the amount of alimony and sentences the husband to pay it. Whenever the implementation of court order and forcing the husband to pay the expenses is not possible due to his tenacity and lack of access to property or inability of husband, the wife has the right to divorce (Articles 1112 and 1129 of the Civil Code). The court will force the husband to pay the alimony only when the marriage relationship is established and the husband can not prove the woman's refusal to do marital duties (Article 1108 of the Civil Law). Former Article 1205 of the Civil Code also states that "The one who should

receive alimony including the wife and relatives can not go to court to demand their support".

New Article 1205 (adopted in 1991) states that: In the case of absence or refusing to pay alimony, payments if it is not possible to force the person who should pay the alimony, the court can call the wife or children and provide the alimony from the husband's , with the obligatory *Almfqh* demand, the amount of alimony absent properties or possessions and if the husband is absent, she can receive the alimony as a debt from another person and the husband has to pay the debt to that person later.

One opinion among jurists is that the woman should prove compliance and if she can not prove it, the court will not sentence the husband to pay the alimony. A group of jurists say that alimony is not proved as soon as the marriage is made, but compliance is also an obligatory condition of the alimony (Najafi, 1983). In this case, because the principle is lack of compliance, the woman should prove it so that the court orders for alimony payment.

The other opinion among Shiite jurists is that alimony is obligated by marriage contract because the evidence implies obligation of it for the wife without restriction. It has been proven that disobedience prevents the necessity of alimony and as long as it has not been proven to prevent it, the obligation of due to marriage continues. Therefore, marriage contract supports alimony and disobedience refuses it and the one who claims lack of it should bring reason (Ameli, Shahid Sani, 1993). This view is more acceptable in Iran's laws because as it is indicated in Articles 1106 and 1108 of the Civil Code, alimony is created by having marriage contract but the wife's disobedience prevents it. So, the woman's proof of marriage is sufficient to demand alimony and the court will judge in favor of the woman in this regard unless the husband proves that the woman has refused to comply with her duties without a legitimate excuse. Iran's Supreme Court has accepted this view

in the Verdict No. 2614 dated 1937 and says “Proving marriage is sufficient for demanding alimony unless facing other aspects and prove that the wife is not eligible for it, Provincial Court’s arguing of marriage contract for forcing the husband to pay the alimony is not correct” (Feiz, p. 178).

7.2. Criminal enforcement of alimony

According to Article 642 of the Penal Code (sanctions and deterrent penalties) dated 1996, the punishment of imprisonment for three months and one day to five months is prescribed for refusing alimony. In accordance with Article 727 of the same law, the husband is not prosecuted except with the plaintiffs’ complaint and by plaintiffs’ forgiving, the court can commute the punishment of the offender, or may waive criminal prosecution "in conformity with sharia". This article is vague and open to criticism due to not specifying the Sharia.

8. CONDITIONS OF WIFE’S ALIMONY FALL

8.1. Wife’s disobedience

The word disobedience means rebellion and refusal and is the opposite of compliance. Three signs have been mentioned for a disobedient woman in jurists’ books: Being angry with the husband, refusing demands of her husband and changing her habits in his manners. Iranian civil law has implicitly defined a disobedient woman in Article 1108 and states that if a woman refuses to comply with her duties without a legitimate excuse, she will not be entitled to alimony. A woman who does her marital duties is called obedient and the one who refuses to do her marital duties is called disobedient.

So according to Article 1108 of the Civil Code referring to Shia scholars’ consensus-based promise, the woman’s’ right to receive alimony falls by her disobedience. But the woman can refuse to comply if she has legitimate and legal excuses and this refusal does not deprive her to receive alimony. Therefore, we

need to answer two questions which are: What is legitimate excuse? And are marital duties stipulated in the law?

Marital duties can be shown in articles 1233, 1103, 1104, 1105, 1114, 1117 of civil law and some of them are the couple's duties and some others are the woman's specific duties including:

1. Socialize well with each other (duties of the spouses)
- 2- Assisting each other in improving the welfare of family and children (duties of the spouses)
3. The woman should accept the man as the head of the family
4. Settling at a house that her husband has set unless the authority to appoint a house is given to the woman.
5. Respecting the husband's opinion on prohibiting the woman from working in a job or an industry which is against the interests or reputation of the family, husband or wife.
6. The rejection of the mandate without the consent of the husband.
7. Doing the sexual intercourse duties

Legal obstacles are:

1. If the authority to appoint a house is given to the wife, she can not attend her husband's house and she can force the husband to attend the house that she determines.
2. If the presence of wife and husband in one home involves fear of physical harm or financial or dignity loss for the wife, she can have a separate dwelling and the court will not sentence her back to husband's home and the husband must pay the alimony until the time her wife has this excuse.
3. The woman can refuse to do her marital duties until she has not received her alimony.
4. If the husband gets a venereal disease after marriage, the women will have the right to refuse sexual intercourse and such a refusal is not a barrier for alimony.
5. If the husband has a big penis and the woman is physically weak, he is forbidden to have penetration and the wife alimony

is not excused, but the husband has the right to terminate the marriage contract.

8.2. Heresy

Another factor for fall of alimony is the wife's heresy. If a Muslim woman becomes an apostate after marriage, before the husband's penetration, in addition to the fall of alimony, dowry is also deprived of her. If the woman becomes an apostate after the husband's penetration, Marriage will be dissolved after passing the waiting time and she has no right to alimony in the waiting time and the relationship of marriage is completely cut off after the waiting time. However, dowry is not excused in any case because of the penetration.

8.3. The dissolution of the marriage

Article 1120 of the Civil Code in the expression of the dissolution of the marriage, says: "Marriage is terminated by divorce, or by waiver period in temporary marriage". As can be seen, this provision has only mentioned three cases of dissolution of marriage. But we must know that in temporary contract the marriage is dissolved by expiration and passing of the time and also the marriage is dissolved in case of death of one spouse. So on the whole it can be said that permanent marriage is dissolved by divorce, termination or death of a spouse and in temporary marriage, passing time, termination and death of one of the spouses are the grounds for dissolution of the marriage.

8.4. The death of man

Article 1110 regarding the wife's alimony in case of man's death say that in the waiting time of death which is 4 months and 10 days, living expenses of the wife are funded from the properties of the man's relatives that have to pay the alimony (in case of non-payment).

9. DISCUSSION AND CONCLUSION

Alimony is the woman's right and she deserves it everyday by compliance and surrendering her soul to the husband and the removal of any obstacles ahead. Alimony is obligatory on the husband and Islamic religions have not often considered a certain amount for it, but have considered to be enough and appropriate with the habits and customs of the parties. A disobedient woman and the woman who shows signs of disobedience such as refusing sexual intercourse is executed from alimony.

If the husband refuses to pay alimony despite having the ability, the alimony is a charge on him but husband's neck religion the Hanafi religion considers alimony as a charge only by the judge's order and the agreement of the two parties. If the husband has a property, the woman can use it but if the husband is totally incapable of paying the alimony, some religions such as Shafi'iyya, Hanbali and Maliki have said that the woman has the right to terminate marriage while other religions believe that alimony becomes a charge and the woman must wait or live on her own.

There is agreement among religions that alimony includes food, clothing, housing and daily needs, but having a servant is required only when the woman can not serve herself or the woman has dignity or the other woman in his social class have a servant. According to what was told, we come to the conclusion that alimony is among the women's rights and privileges. Its quality and quantity is variable with respect to the economic, social and cultural customs factors of the region and the women's dignity ranks. There are multiple legal strategies for meeting women's rights including the right of alimony that can be used if necessary. It is true that non-compliance or disobedience cause the loss of women's right to alimony, but this issue should not be used as a way to excuse women of the alimony right. Therefore, it is essential that the

rules be amended in a way that prevent men from misusing the laws and pave the way for women's rights and provide balancing between the rights of men and women in marriage.

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