



Study of the Nature and Circumstances of the Judicial divorce in the Iranian Legal System

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ABSTRACT

Judicial divorce, the divorce done by the judge, not by the pair. In many divorce laws of the universe is absolutely in the hands of the judge and only the court that can vote to divorce and dissolution of marriage. According to this law, all judicial divorce is divorce. Divorce, in accordance with the laws and regulations of the country, the powers of man, and only in certain cases the woman can divorce court, which they called judicial divorce. What is of particular importance in matters of divorce court, because by its nature what nature has different effects on the treated. The nature of the judicial divorce dispute. Some scholars have suggested that it is revocable and others know it for this, that each of these opinions expressed are fundamental and important. The third point raised in this article suit the characteristics of judicial divorce, so divorce is that "in order for this" know. Not only does this vision defects previous comments but essential step to preserve the family and the rights of women and men blocked the way to possible abuse. Today, supporters of equality between men and women are frequently tried to equal rights of spouses in marriage and at its dissolution supply, and in this respect the Convention on the Elimination of All Forms of Discrimination of Women had passed. In this study, we review the judicial divorce laws and legal regulations (Takeda Civil Code and the Family Protection Act) will be paid to the effects and nature of the divorce because without an examination and clarification of this, the necessary conclusions about the nature of the non-divorce may seem

Key words: Divorce, divorce law, divorce law, refusing to pay alimony, absent, leave the family life, hardship.

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INTRODUCTION

Dissolution of a marriage by a judge without the interference of the couple is called judicial divorce. According to Islamic theologians and statutory and common laws of the Islamic countries, the principle of divorce is its realization by the man, and he can divorce his wife whenever he deems necessary. Although this absolute authority is limited in the laws of some Islamic countries so that in the event of divorce, man must go to the court and in case of inefficiency of court advice, divorce occurs, if a man is determined to divorce, divorce and registration are issued without wife's certain actions. Advocates of equality of men and women's right try to set this equality in marriage and its dissolution and spread it to all countries that are members of the International Covenants and the Convention on the Elimination of All Forms of Discrimination against Women. Thus, the hypothesis is based on proof of judicial divorce and its legitimacy in the light of the questions: What is the legal nature of this type of divorce? How can women be better informed of their legal rights? Moreover, in what cases, can this type of divorce be used? What status does judicial divorce have in Iran laws and regulations? What effects and what nature does it have?

RESEARCH HYPOTHESES

1. There is no definitive consensus among lawyers and in various opinions issued by the judges stating that judicial divorce is irrevocable or revocable in nature.
2. There are many differences between judicial divorce compared with irrevocable and revocable divorce in terms of effects and conditions by taking into account the general provisions of Iran civil law.
3. It seems that regarding judicial divorce, the exercise of court jurisdiction should be defined as a kind of guardian jurisdiction. Moreover, it could be inferred that in this regard, the judge in the Family Court has the power equivalent to the couple's in the issuance and enforcement of divorce, but within the rules and regulations.

Tools and Methodology

Data and information required were collected through library method using the sources, documents, books, journals, and theses in the universities libraries across the country, and the rest of the references were collected in form of virtual search in scientific and Justice Websites, and other legal and valid Iranian and foreign websites.

Judicial divorce

The word divorce also means the dissolution of limit and release. In Amid dictionary, divorce means separation of men and women and releasing from the shackles of marriage and the emancipation of marriage. Judicial divorce is a divorce, in which the couples lose their right for and cannot interfere in divorce. After the wife's request, the court divorces her, and even the court's action is not direct. This means that the court does not directly act on dissolution of the marriage, but asks the husband to divorce the wife. If he refuses to do so, court representative, in the court and in the presence of two fair men witnesses on behalf of the man who refused to divorce his wife in accordance with the general principle (The Judge is Legal Guardian for Refuse) and with the special concubine for divorce, divorces her that should be registered in divorce registration.

The fundamental conditions of judicial divorce

Like other divorces, judicial divorce should have conditions, especially as the role of women is very important in this type of divorce; the conditions are set considering woman. This is in contrast to normal divorce where most of the conditions are set considering the man. Some conditions are identical in judicial and other divorce cases, so the fundamental conditions of judicial divorce can be categorized as follows:

1. The intention and consent of the wife
2. Qualification of the wife
3. The clarity of divorce
4. Requirements for the wife.

The nature of the judicial divorce

Judicial divorce is a unilateral obligation set by the judge. In fact, the judge issues divorce on behalf of the law according to what has happened, or wife's hardship, and not on behalf of the husband, in which case the husbands consent is void. Now that we set this legal action of the judge under the provisions of divorce, we should see what kind of divorce it is. Is it irrevocable or revocable?

Article 1143 of the Civil Code: divorce has two types: irrevocable and revocable. Therefore, other divisions should be included in one of these two forms and the views of jurists and lawyers are that this division is kosher.

The heritage of the woman in judicial divorce

In judicial divorce, in post-divorce waiting period separation has been established between the couples, and it is not kosher that the woman who has used even the last resort for separation from her husband to be considered heir with his death. We must admit that in this case inheritance is excluded. Those who believe in revocable nature of divorce also rule out inheritance and cannot find reason and justification for it.

CONCLUSION

Judicial divorce is documented in many verses and hadiths that jurisprudents have considered and have introduced as standard. In addition, the rule of no harm no wrong doing and The Judge is Legal Guardian for Refuse also document this divorce. Whether the harm and suffering is caused by man's will or involuntary like contagious and hard to treat diseases, the woman can ask for divorce citing hardship. Some jurists see this rule as the basis for divorce decree requested by wife and Article 1130 of the Civil Code follows it. The hardship condition is considered based on the strength of a normal human condition under the woman's condition, but this does not mean that if a woman is suffering due to her specific characteristics that a common man does not see it as hardship cannot request divorce due to hardship. In any case, she must prove hardship conditions in court, and the court examines it according to the condition of the woman, so both personal criteria and hardship can be considered as the base for action.

Considering the disagreements on the nature of divorce among great lawyers, it is better that the legislator revise cases allocated to judicial divorce (1111 and 1112 and the 1029, 1129 and 1130 of the Civil Code), and develop an Article to deal with judicial divorce, the nature, and legal and financial effects of this divorce. This is for efficient protection of the right of the oppressed person. In addition, the courts are forced to adopt a uniform manner.

The woman has no right to alimony in post-divorce waiting period, or man and woman does not inherit from the other in case of death of one of them, but the rules related to the dissolution of the marriage are of the rules of public order and because of their special relationship with people's lives, they should not

be misused. In contrast, any right set for one party should bring a responsibility for it, and it should that all the rights are for one party and the obligations are just for one party. Thus, in the case of the effects of judicial divorce, it should be said that a balance should be set between rights and obligations. Thus, given the right bestowed to woman, the obligations of alimony and inheritance are removed from the man's part.

The procedures of the courts in cases of judicial divorce are not the same, but issuing a certificate of lack of compromise can be considered as a verdict and the man is forced to divorce his wife in divorce registration office with specific concubine in the presence of two fair witnesses. If the man refuses to be present in the office, the court sends its representative there for divorce formalities to be done in his presence, and he signs the document of divorce and office instead of the man.

What is of particular importance in the discussion of judicial divorce is its nature because there is no consensus on this issue. In our law, divorce is divided into two types: revocable and irrevocable, and lawyers have tried to place judicial divorce in one of the two formats. This is while the acceptance of each of these two perspectives has serious problems that cannot be easily passed, so the view that judicial divorce is "irrevocable" was introduced. This perspective not only does not have the problem of the previous comments, but also is an essential and effective step in realization of women's rights and the protection of the family and preventing the probable abuse.

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