



The effect of the husband's criminal conviction on the dissolution of the family and the creation of the right to divorce for the wife

Masoud. Bassami¹*

1. *Corresponding author: Assistant Professor, Department of Law, Islamabad Branch, Islamic Azad University, Islamabad, Iran

Email: z.azad9724@gmail.com Received: 12.04.2022 Acceptance: 09.07.2022

Journal of Applied Family Therapy
eISSN: 2717-2430
http://Aftj.ir
Vol. 4, No. 1, Pp: 649-671
Spring 2023

Original research article

How to Cite This Article:

Bassami, M. (2023). The effect of the husband's criminal conviction on the dissolution of the family and the creation of the right to divorce for the wife. *aftj*. 4(1), 649-671.



© 2023 by the authors. Licensee Iranian Association of Women's Studies, Tehran, Iran. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution-NonCommercial 4.0 International (CC BY-NC 4.0 license) (<http://creativecommons.org/licenses/by-nc/4.0/>)

Abstract

Aim: Divorce is a matter that falls within the rights and prerogatives of the husband. However, Islamic jurisprudence and Iranian law allow a wife to request a divorce in certain cases. One such case is when a husband is criminally convicted to a prison sentence of five years or more, or if he is convicted of a crime that is contrary to the marital interests of the wife. These instances, in addition to being mentioned in Iranian laws, are also included as conditions in marriage contracts. This research aims to determine and analyze the necessary conditions for issuing a divorce verdict at the wife's request in the case of the husband's criminal conviction.

Method: The present study is conducted using a descriptive-analytical method, and its data have been collected through library research. **Results:** The findings indicate that in cases where the husband is criminally convicted to a prison sentence of five years or more, or if he is convicted of a crime that is contrary to the marital interests of the wife, and if the wife experiences hardship and distress, she has the right to divorce.

Conclusion: The research results suggest that the husband's criminal conviction alone is not sufficient for a divorce verdict to be issued; additional conditions are also necessary, such that the wife experiences hardship and distress.

Keywords: Criminal conviction, husband, wife, divorce.

Introduction

One of the conditions under which a woman is granted the right to request a divorce according to the Family Protection Law, as well as the Civil Law, is "the criminal conviction of the husband." The effects of the husband's criminal conviction on marital relations have been considered by the legislator in clauses 8 and 12 of Article 8 of the Family Protection Law enacted in 1974, as well as in clause 3 of Article 1130 of the amended Civil Law of 2002. (Civil Law of Iran, enacted in 1935; Family Protection Law, enacted in 1974). These aspects, in addition to being mentioned in Iranian laws, are also included as conditions in the marriage contract in clauses 6 and 9 of the contractual terms.

Despite the importance of the topic under discussion, so far no research has been conducted on the conditions for granting the right to divorce to the wife in the event of the husband's criminal conviction. Therefore, there are several questions and ambiguities that need to be discussed and examined. Hence, the current research has been conducted with the aim of determining and analyzing the necessary conditions for issuing a divorce decree at the wife's request in case of the husband's criminal conviction.

Methods

The present study is conducted using a descriptive-analytical method, and its data have been collected through library research.

Results

The findings indicate that in cases where the husband is criminally convicted to a prison sentence of five years or more, or if he is convicted of a crime that is contrary to the marital interests of the wife, and if the wife experiences hardship and distress, she has the right to divorce.

Conclusion

Under Iranian Civil Law, based on Islamic Sharia principles, the right to divorce is granted to the husband, and generally, the wife has no such right. However, the law and Sharia allow the wife to request a divorce in certain cases. One such case is the occurrence of hardship ('*usur wa haraj*') for the wife. An example of hardship is "the criminal conviction of the husband." The present research aims to determine and analyze the necessary conditions for creating the right to divorce for the wife due to the husband's criminal conviction. The findings indicate that not every type of the husband's criminal conviction leads to the right to divorce for the wife. It must be a conviction for crimes that the legislator has exclusively stated. On the other hand, mere conviction for crimes and penalties stipulated by the legislator will not create the right to divorce for the wife; she must be in a state of hardship. The criminal conviction of the husband has been considered in two forms in Iranian law (in the laws and marriage contract). One is imprisonment (or imprisonment in lieu of a cash fine) for five years or more, and the other is conviction for committing a crime contrary to the welfare and dignity of the wife and her family. In the first case, for the wife to request a divorce, the husband must be sentenced to at least five years of imprisonment by a final judgment, and the punishment must be executable. Thus, if the husband, despite a final conviction for the said punishment, manages to avoid serving five years in prison by using leniency provisions of criminal law such as suspension, pardon, victim's forgiveness, etc., in such a situation, the wife will not have the right to divorce.

This is because the basis and cause of hardship have been eliminated. However, it should be noted that if the husband's criminal conviction is contrary to the welfare and dignity of the wife's family (the second case), she can request a divorce from the court, even if the husband's punishment is less than five years of imprisonment or not enforced at all due to the use of leniency provisions of criminal law. In such a case, what is considered is the adverse effects of the crime committed by the husband, regardless of the type and amount of punishment.

Given that multiple interpretations by judges are possible due to the ambiguity and generality of laws, it is recommended that the legislator explicitly state that the application of leniency provisions of criminal law, such as pardon and conditional release for the husband, prevents the creation of hardship and the right to divorce for the wife. However, if the nature of the crime subject to leniency provisions is contrary to the welfare and dignity of the wife's family, the right to divorce remains reserved for her.

References

- Afzali Ghadiri, F. (2000). "Investigating the Principle of No Harm and No Hardship in Divorce by Wife's Request" (Part Two). *Journal of Strategic Studies of Women*, 10, 78-95.
- Alaei Nowin, F. (2010). "A Study of Women's Right to Divorce in Imamia Jurisprudence and Positive Law." *Journal of Quranic Studies*, 2, 107-128.
- Ardabili, M. A. (2014). *Criminal Law, Volume Three, First Edition*. Mizan Publications.
- Asadi, L. (2004). The Status of Hardship and Difficulty in Law and Procedure. *Journal of Family Law*, 34-35(23), 9-23.
- Bojnourdi, M. (2022). *Rules of Jurisprudence, Volume One, Third Edition*. Arooj Institute.
- Dehkhoda, A. A. (2005). *Dehkhoda Dictionary*. Tehran: University of Tehran Press.
- Emami, H. (n.d.). *Civil Law, Volume Five*. Tehran: Islamic Publisher.
- Emami, H. (n.d.). *Civil Law, Volume Four*. Tehran: Islamic Publisher.
- Fehrest, Z., & Chavoshiha, M. (2008). "Conditions Stated in the Marriage Contract: An Investigation and Analysis." *Shia Women Journal*, 5(17), 109-140.
- Ghoramlaki, A. M., & Hamidi, M. R. (2012). "The Legitimacy of Financial Penalties." *Journal of Research in Islamic Jurisprudence and Law*, 8(28), 145-156.
- Hayari, M. H., Zabarjadi-Moshfegh, A., & Aliakbari, E. (2013). A Jurisprudential Critique of the Validity of the Condition of Not Remarrying upon Marriage. *Teachings of Civil Jurisprudence, Islamic Sciences University of Razavi*, 7(53), 53-78.
- Jafari Langroudi, M. J. (1999). *Legal Terminology*. Tehran: Ganj-e Danesh Publications.
- Karamati, S. H., & Taqavi, D. (2017). "Clarification of the Wife's Right to Divorce in Positive Laws, with an Emphasis on Article 1132 of the Civil Code." *Journal of Political Science, Law, and Jurisprudence Studies*, 3(2), 83-91.
- Katouzian, N. (1999). *Civil Law, Family, Volume One*. Mizan Publications, 406.
- Makarem Shirazi, N. (2005). *The Book of Marriage, Volume Three, First Edition*. Imam Ali School Publications, 108-283.
- Mirkhamesi, F. (2008). "Conditions in the Marriage Contract: An Investigation and Comparison in Imamia Jurisprudence and Sunni Jurisprudence." *Journal of Islamic Jurisprudence and Law Research*, 1, 161-190.
- Moein, M. (1995). *Moein Dictionary*. Tehran: Amir Kabir Publications, 2300.

- Mohaghegh-Damad, M. (1986). A Jurisprudential Study of Family Law, Marriage, and Its Dissolution. Tehran: Islamic Sciences Publications, 22.
- Mohaghegh-Damad, M. (2009). Jurisprudential Principles, Volume Two, Ninth Edition. SAMT Publications, 81-104.
- Mohammad Nasl, G. R. (2004). An Applied Study of the Suspension of Punishment in Criminal Law and Iranian Judicial Procedure. Journal of Law and Political Science, 64, 241-258.
- Montazeri, A. H. (n.d.). Treatise on Islamic Inquiries, Volume Three, First Edition. Qom, 389.
- Safaei, H., & Emami, A. (2020). Family Law Compendium, Fifty-Third Edition. Mizan Publications, 231-232.
- Shams Nazari, M. A., & Ahmadi Natour, Z. (2015). An Introduction to Modern Approaches to Freedom in Conditional Systems. Journal of Judicial Law Perspectives, 72, 131-159.
- Shams, A. (2011). Civil Procedure Code, Fundamental Volume Two. Tehran: Drak Publications.
- Taheri, H. (1999). Civil Law, Volume Three, Second Edition. Publisher of the Islamic Teachers' Society.