

WOMEN'S RIGHTS IN DISSOLUTION OF MARRIAGE; A COMPARATIVE STUDY BETWEEN IRANIAN MUSLIM-SHI'A AND INDIAN HINDU LAWS

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Abstract: In old Hindu law, Divorce was unknown to the laws. There was a time when it was believed that the marriages were arranged in heaven, and it used to be performed on earth. Marriage in Hindu religion is considered to be a sacrament. In Islamic religion, divorce is the worse lawful action. But sometimes, through the existence of some physical and mental defects or according to the condition stipulated in separate binding contract, one of the parties has given the right to the other party to dissolve the marriage.

Some similarities of dissolution of marriage between Iranian Muslim and Indian Hindu laws are: sanity, Cruelty, Desertion, leprosy, Venereal disease, etc. No doubt the interpretations of these causes have been differently done in the countries by the respective civil courts, but principles are the same to some extent. So, for the sake of academic interest, some of the principles of these similarities can be discussed.

Key words: Grounds and Causes of Dissolution of marriage in Iranian and Hindu laws, Man's and women's specific Defects, Common defect of Men and Women.

1. Introduction

Terminating the marriage contract by dissolution of marriage and divorce is one of the legal measures, which has gone through various stages in the course of history of nations and countries and has undergone changes as well. About divorce different ideas and opinions are expressed. Some people considered it is harmful and dangerous so condemned it, and some people believe some times divorce is necessary and better than a life with suffering and conflict. The sociologists and jurists have put forth contradictory theories in this regard. These theories are briefly reviewed below:

- Lack of revocation of marriage except in case of death of one of the couples.
- Revocation of marriage by husband in certain cases.
- Revocation of marriage on the plea of any of the couples by the court in certain cases.
- Divorce of the wife by husband without any reason.
- Divorce on the will of each of the couples without any reason or cause.¹

2. Divorce in the Hindu and Muslim Religion

In old Hindu law, Divorce was unknown to the laws to the Dharmashastra as marriage was regarded as an indissoluble union of the husband and wife. In Hindu religion, there was a time when it was believed that the marriages were arranged in heaven, and it used to be a relation of flesh with flesh and bone with bone. The wife cannot be separated from her husband either by sale or by abandonment, because marital tie could not sever under any circumstances, whatsoever. Therefore follows that the Hindu law does not recognise a divorce.

In the modern law-Hindu marriage Act, 1955, came into existence eight years after the independence of the country, the provisions of divorce in the existing Marriage law has brought about a radical change in the legal concept of Hindu Marriage Section 13 of the circumstances which extend the right of divorce. Section 14 renders the provisions of divorce a bit difficult as it provides that no petition for divorce can be presented within one year of the marriage unless it causes exceptional hardship to the petitioner or it become a case of exceptional depravity on the part of the respondent.²

Among the pre-Islamic Arab, the power of divorce possessed by the husband was unlimited. They could divorce their wives at any time, for any reason or without any reason.³

The Prophet of Islam (peace be upon him) looked on these customs of divorce with extreme disapproval of society.⁴ He restrained the unlimited power of divorce by the husband and gave to the woman the right of obtaining the separation on reasonable grounds.⁵ The Prophet (peace be upon him) has made it clear that Islam does not regard it as desirable.⁶ In Islamic religion, divorce is not forbidden, but it is a worse lawful action. In Islam, divorce is considered as an exception to the status of marriage. Divorce being an evil, it must be avoided as far as possible. But in some occasions this evil becomes a necessity, because when it is impossible for the parties to the marriage to carry on their union with mutual affection and love then it is better to allow them to get separated than compel them to live together in an atmosphere of hatred and disaffection. Islam tries to prevent divorce as much as possible. In Islam divorce is allowed only as the last resort when all other means fail.⁷ The Prophet (peace be upon him) declared that "among the things which have been permitted by law, divorce is the worst" and Imam *Sadegh* (peace be upon him) says: "Nothing is worse and depraved than a family which is broken. Allah disgusts those who divorce and whenever divorce is done, Allah's realm will be trembled"⁸. But sometimes, through the existence of some physical or mental disorders in one of the parties of contract that gives the right to the other party to dissolve the marriage.

In this study, the writer will be explained the similarities and differences causes of dissolution of marriage in Iranian and Hindu laws. No doubt the interpretations of these causes have been differently done in both the countries by the respective civil courts but principles to the some extent are same. So, for the sake of academic interest some of the principles of similarities can be discussed.

2.1. Grounds for Divorce in Hindu laws

According to Section 13 of Hindu Marriage Act, 1955 lays down as under:

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground by either the husband or the wife, be dissolved by decree of divorce on the ground that the other party:-

- Is living in adultery; or
- Has ceased to be Hindu by conversion to another religion; or
- Has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition; or
- Has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or
- Had, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or
- Has, renounced the world by entering any religion order; or
- Has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; or
- Has not resumed cohabitation for space of two years or upwards after the passing of a decree for judicial separation against that party; or
- Has failed to comply with a decree for restitution of conjugal right for a period of two years or upward after the passing of the decree.

2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground:

i) In the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition; or

ii) That the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.^{9, 10}

- **Adultery.** - The amendment in Section 13 of the Hindu Marriage Act, by the Marriage Laws (Amendment) Act, 1976 a single act of voluntary sexual intercourse with any person other than his or her spouse has been made a ground for divorce.¹¹
- **Cruelty.**-Section 13 (I) (ia) Hindu Marriage Act. - The modern law takes the view that the objective is to accord protection to the innocent party. Nagging and scolding and even incompatibility of temperament have been held to be included in cruelty.¹² There is a large volume of case law around the legal concept of cruelty in India as well as abroad.¹³
- **Insanity** (Incurably of unsoundness of mind). - Insanity is a ground both for judicial separation and divorce.¹⁴ Mental disorder or schizophrenia should be of such a quality that the petitioner is not reasonably expected to live with the respondent.¹⁵
- **Leprosy.** - The Marriage Laws (Amendment) Act, 1976 has made leprosy a ground both for judicial separation and divorce. No duration of leprosy is specified. Two conditions are necessary: it must be (i) virulent, and (ii) incurable.¹⁶ Sometimes the spread can be arrested by a long period of treatment, but relapse in it are frequent.¹⁷ Leprosy is also virulent form which ulcerous and unsightly symptoms appear or when social intercourse becomes almost impossible.¹⁸
- **Venereal Disease.**-Venereal disease to be a ground for divorce or judicial separation must be in a communicable form. Congenital syphilis is excluded from its ambit.

3. Dissolution of marriage in Iranian laws

Article 1120 of Iranian civil Code states: “Marriage contract is dissolved by dissolution, divorce or dispense with remaining term in Temporary Marriage”. This article hasn’t stated anything about death but it is obvious that the death of one of the couples causes marriage dissolution.¹⁹ Marriage dissolution, like any other irrevocable contract, is voluntary, that is given to one party of the contract in certain issues of law according which he/she can break the marriage contract and stop continuing it and its effects from the time of dissolution. In dissolution it is assumed that the contract has been primarily made in a right way and it has its own effects and consequences²⁰ although each parties of the contract has the right to dissolve the contract either based on contract and parties conditions or due to certain situation in which one of the parties’ will be in loss in continuing the contract.²¹

3.1 Causes of Marriage Dissolution in Iranian laws

According to Iranian Civil Code there are two things which cause marriage dissolution:

3.1.1. *Defect.* - in Iranian civil Code the causing defects of marriage dissolution are divided into three parts:

- **Common defects of Men and Women.**-Article 1121 of Iranian Civil Code states: “The insanity of each one of the couples is the cause of dissolution in condition of continuity, either continuously or in periods”. Insanity is a mental disorder; “Mental disorder is when the person cannot do daily and routine responsibilities and she/he acts aimlessly.”²² Accordingly, in article 1121 marriage dissolution due to insanity is conditioned by its continuity.²³
- **Men’s specific defects.**-Article 1122 of amended Civil Code in 1989 states: The following defects of men give the right to women for dissolution :**(i) Khasa** , which means Castration. **(ii) Male genital organ anatomical defect** (iii) **Anan**, which means Impotency.

“The main purpose of matrimonial relationship is not intercourse, but at least it is one of its main reasons; so it wouldn’t be strange having the right of dissolution by women if a man happens not to be able to have intercourse, in a condition that she hasn’t been told about it before marriage”.²⁴

- **Women’s Specific Defects.**- Article 1123 of Iranian Civil Code states six defects of women that give the right of dissolution to men which are: **(i) Qaran*** which means Bony or fleshy tissue structure blocking vagina, **(ii) Black Leprosy**, **(iii) Leprosy**, **(iv) Efza** (Efza which means joining bladder and menstruation channel) **(v) Paralytic disability**, **(vi) Two eyes blindness**²⁵. “Women’s defects which has been existed before marriage causes optional dissolution and whatever defects have been existed after marriage contract (intercourse marriage) does not cause optional dissolution”.²⁶

3.1.2. Breaching Conditions Regarding Qualification.- Article 1128 of Iranian Civil Code states: “Whenever one of the parties of the contract is determined by a qualification and after the contract it will happen not to be true then the other party of the contract has the right of dissolution, either the described qualification is clearly stated in contract or it is orally stated during contract”.

4. Conclusion

In Islamic religion, divorce is not forbidden, but it is the worst lawful action. Islam accepted divorce almost 1430 years ago as a necessary evil. In old Hindu law, Divorce was unknown to the law; however in Hindu religion divorce has been approved at 1955, While there are some similarities and some differences in dissolution of marriage between Iranian Muslim (shi'a) and Indian Hindu laws, the similarities are more than differences. So it shows that Islamic Laws has been adapted to the natural and innate needs of human in all centuries.

No doubt the interpretations of these causes have been differently done in both the countries by the respective civil courts but principles to the some extent are same. So, for the sake of academic interest some of the principles of similarities can be discussed. Some similarities and differences are:

- One of the causes of divorce in the Hindu law is “**Cruelty**”; in Iranian law also according to article 1130 of the Civil Code and condition of marriage contract also; “The husband’s social misconduct or maltreatment of the wife to a point unbearable to her.” The wife’s can apply for divorce as discerned by the court.
- Another cause of divorce in the Hindu laws is “**Desertion**”; in Iranian law also according to article 1130 of Civil Code and condition of marriage contract; the husband’s abandonment of family life with no justifiable reason or his / defaulting from (appearing before) or refraining from (appearing before) the court of law for six consecutive months after the summon. But in Hindu law the time of desertion is 3 years.
- Another cause of divorce in the Hindu laws is “**Insanity**” for a continuous period of not less than three years; in Iranian law according to article 1125 of the Iranian civil Code;” Women have the right to dissolve the marriage if man’s insanity happens after marriage contract.” But no determined a period.
- Another cause of divorce in the Hindu laws is “**leprosy**” for a period of not less than three years the husband or the wife can dissolve ...but in Iranian law (according to article 1123 of civil Cod)leprosy and black leprosy are women’s specific defects that give the right of dissolution to men.
- Another cause of divorce in the Hindu laws is “**presumption of death**” for a period of seven years or more... but according to Article 1029 of the Iranian Civil Code” If a husband goes on missing or remains absent for four years, his wife can plea for divorce.”
- Another cause of divorce in the Hindu laws is “**venereal disease**” for a period of not less than three years ...but according to condition of marriage contract; “The husband’s affliction with refractory diseases, which can endanger the wife’s health.”
- Another cause of divorce in the Hindu laws is “**non – resumption of cohabitation**” after a decree for judicial separation, in Iranian law also according to condition of marriage contract; “Where he fails to fulfil her other indisputable rights for the period (six consecutive months) and it will not feasible to force him into doing this.” his wife can apply for divorce as discerned by the curt.
- According to Iranian Civil Code there are two things which cause marriage dissolution:
 - (i) Defect
 - (ii) Breaching conditions regarding qualification.

Defect in Iranian law divided to three section: 1- common defect of men and women 2- men’s specific defects and 3- women specific defect. But in Hindu law don’t determined specific defect men’s or women’s.

- Addition whatever mentioned, (In Iranian Marriage counteract) according to condition stipulated in a separate binding contract are causes where the wife can apply for divorce including: (i) “Where the husband refuses to pay the wife’s cost of maintenance for any reason for (a period of) six months and it will be impossible to coerce him “ and (ii) “The husband’s find conviction resulting in a five-year imprisonment or its equivalent pecuniary punishment resulting in such a prison term due to his

incapacity to extinguish the debt or a combination of the two together resulting in such a prison term” and (iii) “where the sentence has already been executed. “and (iv) “The husband’s addiction to any of harmful drugs which, as discerned by the court, interferes with the family principles and renders life unbearable for the wife” and (v) “The husband’s punishment by the Islamic canon law or a competent theologian due to an offence which is incompatible with the wife’s family prestige and customs. Distinction as to whether the punishment is in disharmony with the wife’s social and personal status lies with the court of law and (vi) “Where the husband should remarry without seeking consent of the wife or where he should not treat his wives equally. But in the Hindu Law except remarriage other conditions are not recognized; therefore it is suggested to add some of the conditions of Iranian marriage contract to observe the rights of Women in Hindu Laws such as: the husband refuses to pay the wife’s cost of maintenance, The husband’s find conviction, The husband’s punishment by court, The husband’s addiction to any of harmful drugs.

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