International Academic Institute for Science and Technology

International Academic Journal of Humanities
Vol. 5, No. 2, 2018, pp. 76-90.
ISSN 2454-2245

International Academic Journal of Humanities

www.iaiest.com

Comparing and reviewing the legal provisions of the Family Protection Law 2012

Peimaneh Eslami, Masoud Raei, Mohammad Javad Abdollahi

MA student of Islamic Azad University of Khomeini Shahr, Isfahan.
Associate Professor of Law, theology and Islamic Sciences of Islamic Azad university, Najaf Abad Branch.
Facualy Member of Islamic Azad University Khomeinishahr Branch.

Abstract

Considering the special role of the family institution in the legal system of Islam and acknowledging the existence of some deficiencies in the existing laws governing the family institution, the necessity of reviewing the previous laws and ratifying the law that as far as possible eliminates the existing problems and Being responsive to possible future bottlenecks, it was well felt. For this reason, the new family protection law was passed in March 2012. To avoid tangible judgments and scattered laws, materials were included in this law to facilitate the process of proceedings. Examining the laws of family support indicates that the legislator has adapted to the new needs of the community and has sought to prevent the conflict and tension in marital relations. Although the two passage laws in this area are not defective. In this article, we try to examine the legal and criminal aspects of family protection laws. This paper has been conducted through a descriptive-analytical method through library research.

Keywords: Family Law, Family Protection Law, Proceedings, Law Review, Legislature.

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

Introduction

Human being is a social being that needs the family more than anything else, so that it needs communication with others in order to realize its development process. The need to pay more attention to the institution of the family and its specific characteristics has created the obligation for the legislature specifically dedicated to the family institution and, by predicting suitable solutions, to prevent this institution from being disconnected as far as possible, and the possible problems and problems At the lowest cost. For this purpose, family protection laws were adopted in 1967 and 1974, each with specific innovations included.

Family suits consisted of civil suits between each husband and children, ancestor, father, guardian, and guardian of the rights and duties prescribed in the seventh book in marriage and divorce (including lawsuits related to jazz and female seals) and eighth book In the children's and ninth books in the family and in the tenth book on the grave and guardianship of the Civil Code, as well as Articles 1005, 1006, 1028, 1029, and 1030 of the said law and related materials in the law of affairs.

Given the weaknesses that existed in the rules of the former family and where it was felt, family court judges need to have a fair trial to achieve unity of vote, so the new family protection law has been approved in 2012. The provisions of this law resolved the current difficulties of the courts and resolved the weaknesses that existed in the former laws. Unfortunately, it is said that this law only seeks to protect women, and this is a misconception, because our goal is to support the foundation of the family, which includes women, men and children. The new family protection law has been adopted with the abovementioned objectives in mind, reducing the problems in the form of family law, especially for women and children, reducing the length of proceedings in family litigation, and specializing in dealing with these cases, resolving ambiguities Conflict and vacuum from the current laws and regulations of the family and the judiciary of the family's regulations.

Considering the necessity and importance of the material mentioned above, it was felt that this paper examines the law of the protection of the new family, the innovations that this law brings in various legal and criminal contexts, as well as the legal effects that innovations This law will apply to the institution of the family.

1-Concepts

1.1 The concept of family law

Family law consists of two words: law and family. Therefore, in order to define it precisely, it is necessary to define each of the above terms separately; the family, in its narrow sense, is a social unit, derived from the marriage of a woman and a man whose children originate from them, complete it. They do. Another definition of the family is that of a group of people who gather together with the common purpose and interests.

The Universal Declaration of Human Rights states in article 16, paragraph 3, of 1948, that "the family is the natural and fundamental part of the community and has the right to benefit from the community and the state." (Katouzian, 2006: 14)

A group of other sociologists has defined the family as "general family" in such a way that, in addition to hemodynamic relationships, such as childbirth and social and contractual acceptance, "is a group composed of people from Through marriage, blood or admission, they interact with each other as

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

husband, wife, mother, father, brother, sister and child, and create a common culture and live in a particular unit. "(Sarokhani, 1996: 35)

1-2. The concept of marriage

"Nekah" in the word means marriage (Moein, 2008: 1150; Ansari and Taheri, 20099: 2080), and confrontation (Mohaqeq Damadi, 2005: 21). In the Arabic language, when the two mountains are opposite, the term Tanakah al-Jubalan, ie, two mountains, is placed against each other (Mohaqeq Damadi, ibid).

Marriage in the term of jurisprudence is a marriage by which men and women are entitled to one another, such as a solitary confinement and the possibility of living together. (Ansari, Ante, 2080) marriage is not defined in Iranian civil law. Some lawyers (Safaei, and Emami, 1993: 23) consider the legislator's refusal to define the variety of works and results of marriage, as well as the vagueness of the elements and elements of it. However, in law, in spite of the law, various definitions of marriage have been made, which are referred to some of them:

Marriage is a legal relationship that results from marriage between men and women and gives them the right to take sexual intercourse. (Emami, 2004: 326)

Marriage is a contract by which a man and a woman are united in order to form a family and participate in life (Katouzian, 2008: 35).

Marriage is a marriage between a woman and a man for the purpose of socializing and sharing in life. (Jafari Langroudi, 2003: 1003)

In general, the definition of marriage to the emotional relationship between marriage and the right to live with each other and the manifest manifestation of this relationship of the right to sexual orientation can be considered a proper definition of marriage.

1-3. The concept of divorce

The divorce which means separation (Homiri, 1420AH: 4141), means opening the knot and the abandonment (Farahidi, 1410AH: 102). Divorce is also lexical in the meaning of quitting, and the divorce is infinite, meaning "abandoned" It comes in the form of marital closing by a woman or husband. In other words, the expression of the meaning of the term divorce is also proportional to its literal meaning, which means the separation of the woman from marriage and the termination of the marriage; in some respects, the divorce is the dissolution of the permanent marriage with the special conditions and formalities by the couple or the representative Legislation. (Safa'i and Emami, ibid, p. 259) It should be noted that divorce is essentially a permanent marriage contract; Article 1139 of the Civil Code provides: "A divorce is a permanent marriage, and a terminated marriage with the expiration of the term On the other hand, the husband leaves the couple. " In terms of the nature of divorce in jurisprudence and law, divorce is one of the legal acts and it is subjected to the following, with the will (whether it is voluntary or legal representative).

1-4. The concept of alimony

The science of word-of-mouth The literal meaning of the term alimony is two things: a) going and perishing; b) prevalence (Lamullof, 2000: 827). Also, in Farsi, allegations of two meanings are mentioned:

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

1. What they spend and forgive.
2. What are the costs of paying attention and giving birth. Cost-effective life for women and children, day and night. (Amid, 2005: 1913)

The fact that the holy legislation has defined the limits of the holy verses to the custom of the divine, so the definitions given in jurisprudence of alimony are often accompanied by examples, so most of the differences come to the fore. In javaher al-Kalam, it is stated for alimony: "A woman's need (including food, clothing, housing, servant, cooking utensils), which would normally fit into the condition of a woman in that city." (Najafi, 2015: 330) Our country's laws have not provided a definition of alimony, and what is stated in Article 1107 of the Civil Code, as well as in Article 9 of the Family Protection Act of 1353, is an example. For example, Article 1107 of the Civil Code states that "Alimony is all the standard needs that fit the status of a woman, such as housing, clothing, food, home furnishings, and medical and sanitary expenses, and the servant in the event of a habit or need Mediator of Deficiency or Disease. " What is apparent from the appearance of this article is the monopoly of alimony to the explicit legal propositions that, unquestionably, such an appearance is not compatible with the custom, the interests of the family and social necessities. (Gorji, 2005: 214)

Despite the law, the opinions of lawyers about alimony involve different definitions. Some people believe that alimony is something that is necessary for the living of life (Safaei, 1995: 393). Others argue in a more comprehensive definition: "Alimony is all that a woman, considering the degree of civilization and the environment, and It needs its physical and mental status. "(Katouzian, p. 187)

Therefore, alimony can be considered as all that the woman needs, and the custom also requires it according to the particular circumstances of the woman. According to the above, it should be said that the concept of alimony is essentially required to be paid, and in its examples it is a completely customary concept, and the sacred law has given it to the custom, and the element of time and place in it has a decisive role.

1-5. The concept of dowry

The word science scientists for the word Mehr (dowry), which seems to be the most commonly used term for this right, have referred to the meaning of sincerity, and they mean that they are financially intended to be used by women for the benefit of her. In the term of law, the seal is the financial statement that the man is required to give to the woman on the occasion of marriage. Some also state that; the omen is the amount of money a man gives him during marriage. In the Civil Code, there is no definition of the dowry but Article 1078 of the Criminal Code states, in the case of the seal, that "anything that is financially owned and possessable can be sealed." Also, in the 1080s, we read as follows: "The determination of the seal is subject to the pleasures of the parties." Also, in Article 1082 of the Criminal Code, it reads: "Once a woman is married, the owner of the property is seized and can seize any kind of possession they want. »

According to the definitions and legal cases, the dowry can be defined as the stamp is the amount of money that is determined by the consent of the couples, and as soon as the marriage takes place, the man is obliged to pay cash or a pledge to be paid. Of course, it should be noted that if the dowry is the same, it will be from the moment of the marriage to the woman's property, but if the seal is general, that is, the property is in the hands of the husband, for example, 5 coins of gold, the ownership of the woman will not be established unless the husband specifies and says that this is his wife’s dowry, in which case the woman's property will be deployed.

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

1-6. The concept of custody

Custody means maintaining, and regulating the relationship of the child with the outside world. Although the Civil Code does not define custody, the Child Care Policy has been addressed in Articles 1168 to 1179 of this law. Also, paragraphs 43 and 46 of the Charter of the Rights and Responsibilities of Women in the Islamic Republic of Iran (2004), the general policies of the Islamic Republic of Iran regarding the right and responsibility of child custody and the need for financial support of the father and the right to visit the child in the event of expiration or extinction Custody and the responsibility of parents to prevent the children from enjoying their visit (Charter of Rights and Responsibilities of Women in the Islamic Republic of Iran, approved by the Supreme Council of the Cultural Revolution of 2004)

Accordingly, keeping the child in the family and with the parents, except in certain circumstances (such as illness, addiction, etc.), has always been one of the most important goals of the Iranian legal system in protecting the family.

2- Rules related to marriage

The family is created by marriage. Legislator in the Family Protection Law, adopted in 2012, on the important two-way registration of marriage and restitution of the nominee institution, expresses that is subsequently mentioned.

2.1 Identification of the nomination entity

A conspiracy candidate is for marriage. It seems that the agreement can be regarded as fully valid, regardless of moral obligations in the world of law. The laws of many countries, including Switzerland, have discussed the institution of nomination in great detail. Some consider weddings as weddings during their engagement. Sometimes the time after the contract, as long as they go to the house, they consider the nomination period, and many others consider the time of marriage before the marriage as a nomination period. The proper definition of the nomination period is close to this definition. (Safaei and Emami, ibid, p. 61) The period of nomination is called a period that begins with the promise of marriage and ends with an official contract and at least the main family of the girl and son are aware of it. The start of the engagement can be accompanied by a ring and possibly a small party.

The rules for the nomination in Articles 1035 to 1040 of the Civil Code came from articles 90 to 95 of the Swiss Civil Code. (Safaei and Emami, ibid., P. 62). According to these regulations, the nomination of a marriage is permissible, and each of the parties can cancel it and abandon the marriage. But in Islamic jurisprudential rulings, a nomination without a permanent or temporary contract is completely abolished and ineffective. Article 1035 of the Iranian Civil Code states: "A promise of marriage does not create a spouse, although all or part of the divorce prescribed by the parties for marriage is paid. Therefore, every woman and woman can refuse to marry as long as the marriage contract has not expired, and the other party cannot in any way force her to marry or to seek compensation for the mere refusal to marry. "

Thus marriage in civil law is realized only through the form of a marriage contract, whether temporarily or permanently, and without marriage, no legal relationship exists between men and women. Even if the girl and the boy, before entering into a marriage contract, under the title of nomination, are obliged to marry each other and make a payment for the offense, this obligation is not protected by law and is ineffective and the obligated amount is also due (To see the opposite: Safaei and Emami, ibid, p. 69)

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

Formerly in Article 1039 of the Civil Code, it was believed that there was a two-year period of time for these types of claims, but since Islamic law does not have time-lapse of claims, and the right of old as it is, it cannot be ignored or abandoned; this article of the Civil Code Removed in 1982 amendments. Today, there is no time lag for these claims and after every time a candidate has been nominated, a candidate who thinks he has a right can go to the court of law and ask for the right.

With the adoption of the new law on family support, we are witnessing the revival and re-thinking of the legislature, an important phenomenon in marriage. Although this is not explicitly mentioned in the new family protection law, but according to Article 4, paragraph 1, in which the nomination and damages resulting from its collapse as one of the matters that fall within the jurisdiction of the family court, this can be Because in 1991, due to the non-religiousness of the recognition of the principle of candidacy by the Guardian Council, Article 1036 of the civil law was removed from civil liability due to the unlawful disturbance of the candidature of the law, and now this legislative act in approving the nomination as the first jurisdiction of the court The family represents the identification of the nominee institution legally in the family law.

2.2 Requirement for Temporary Marriage Registration

The legislator has required the registration of marriages in the official marriage office in several laws such as penal laws, marriage law, and the purpose of this requirement is to facilitate the proof of marriage and the protection of the rights of children and women. The record in the official bureaucracy helps to reduce many of the disagreements and disagreements about denial of marriage and family, and helps to solidify the foundation of the family and create order in society. For this reason, in Article 1 of the former marriage law, "... every marriage and divorce should be recorded in one of the offices ... and if a person and a person refraining from performing this duty, from one month to They will be sentenced to six months of imprisonment. "(Amendment Act, Marriage Law, adopted 29: 2: 1927, Article 1)

As you can see, the law requires that every marriage (permanent and temporary) be recorded and if a spouse or nephew (the notary) refuses to register it, he or she will be sentenced to incarcerated. However, this punishment is recognized according to the notion of the honorable council of non-religious guardians, according to which: "The punishment of the lawmakers in the informal marriage contract mentioned in the law of marriage law ... is not religious". Therefore, according to the Council of Guardians, the punishment of individuals It is not legal for the marriage to be registered in the official marriage office.

However, given the importance of registering these events and the necessity of their criminal enforcement, the opinion of the respectable guard council was criticized, therefore, the penal laws of our country resolved these forms and established a one-year imprisonment for "permanent" imprisonment. However, this article only punishes a man who has made a "permanent" marriage and does not include the failure to register a "temporary" marriage (Safaei and Emami, ibid, 51-52).

The legislator has obligated individuals to record incidents and legal actions in the relevant official offices and, in some cases, to determine penalties in case of violation. But in the case of registration of marriage, according to the Islamic Penal Code, the only non-registration of a "permanent" marriage is a criminal offense, but the failure to register a "temporary" marriage in accordance with the advice of the respectable council of guardians and the provision of the Islamic Penal Code, as if religiously "temporary marriage" Legally, no criminal liability for not registering it will be noticed by anyone.

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

This point is also taken into account in Article 22 of the new Family Protection Act. Article 22 of the Family Protection Act provides that temporary marriage does not require the registration of official marriage and divorce offices unless the relationship between men and women has led to pregnancy or temporary marriage, the wife's condition, registration of marriage. Therefore, according to the said article, the registration of temporary marriage is subject to three conditions: the pregnancy of the wife, the consent of the parties and the condition of the contract will be obligatory, and in the remaining cases it is not obligatory to register it.

2-3- Requirements before marriage

According to Article 23 of the Family Protection Act 2012: "The Ministry of Health, Medical Education and Medical Education is required within one month from the date of entry into force of this law the diseases that must be immunized before marriage, as well as the contagious and dangerous diseases for couples and children caused by Define marriage and announce it. The official marriage offices must be certified by doctors and centers approved by the Ministry of Health and Medical Education before the registration of the marriage, indicating the absence of drug addiction and the absence of diseases related to the subject matter of this article, or the vaccination of the parties to the diseases mentioned above."

Also, the note to this article states: "If a certificate is issued for the presence of addiction or disease, registration of marriage is permitted if the parties are informed. For hazardous and contagious diseases named by the Ministry of Health and Medical Education, the parties will be referred to the designated centers for care and monitoring. In cases where couples' dangerous illness causes the fetus to be identified by the Ministry of Health, medical treatment and education, care and supervision should also include the prohibition of generational production. "

In fact, Article 23 expresses the protection of the rights of the child. But unfortunately, no criminal and spiritual sanctions have been foreseen. This is one of the bugs in this law and it is hoped that the rules will be lifted.

Another issue regarding the conditions for marriage is the issue of re-marriage. Article 23 of the bill stipulated that a man should have the right to have a court of law and to commit to the administration of justice, and this work was easy, and, of course, in the bill, the conditions for the resignation are not mentioned and the resignation depends on Individual financial capability and commitment to justice. After the adoption of the law, this article was withdrawn from the bill, and therefore, due to the persistence of the new law on remarriage, the law on the protection of the family 53 is no longer outdated, and what is not in conflict with the law in the family protection law is enforceable, and therefore In the case of polygamy, the Family Protection Act 1974 continues to apply with the same number of conditions.

3. Divorce

Divorce in the new law is conditional on referral to counseling centers and receipt of evidence of impossibility of conciliation.

3-1. Referral to counseling centers

Divorce in the new law is conditional on referral to counseling centers and receipt of evidence of impossibility of conciliation.

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

3-1. Referral to counseling centers

Intervention in the family refers to a set of measures, activities, and services that are used to resolve couples' divorce in order to maintain family cohesion. Taking into account appropriate measures for the care and parental benefit of parents in the event of separation. (Safaei and Emami, ibid, p. 79)

One way of intervening in families is to refer to counseling centers. Since courts now quickly agree to divorce pertaining to divorce, in the Family Protection Act 2012, courts were required to provide marital counseling counseling centers of different experts if the divorce seekers were agreed upon. In psychology, social work, law, and social sciences, half of them should refer to married women in the field, which may be solved by examining them. If the couple solves the problem at the family counseling center after the report is submitted, the couples will return to their lives and otherwise they will bring the outcome to court. The counseling centers are required to provide the following services:

1. Providing specialized marriage services to education, guidance and counseling.
2. The provision of specialized family counseling services to help build healthy and capable families to deal effectively with the issues, problems and life-situations.
3. Providing specialized religious advice services in the field of marriage and family consolidation.
4. Provision of specialized legal counseling services on the rights and duties of women, men and children with the aim of durability and consolidation of the family.

3.2. The order to not-compromise

The notion of the impossibility of reconciliation for the first time in Article 6 of the Family Protection Law, adopted in 1967, entered the Iranian legal system without a precise definition of it. The other law, which provided for equal rights for men and women to claim divorce from the court, replaced the certificate of impossibility of conciliation without mentioning the "divorce". For example, Paragraph 8 of the article states: "In the following cases, a woman or husband may, in case of a case, request a certificate of invalidity from the court ..."

After the Islamic Revolution, the Law on the Establishment of the Civil Criminal Court of 1978, set forth in Note 2, Article 3, restores the provisions of the Civil Code regarding the right to divorce and the referral of divorce cases to civil and religious law to the rule of Article 8 of the Family Protection Act, as well as a certificate of impossibility The divorce is the same as that prescribed in civil and religious law, but in cases where the husband requests divorce on the basis of Article 1133 of the Civil Code, the court initially refers the matter to arbitration in accordance with the verse of the sentence, and if Couples do not get compromised, divorce will allow couples. In cases where the couple has agreed on the divorce, Jh court is not necessary ...) and while court decision on divorce couples "let" call, in cases where the couple has agreed on the divorce, it is not necessary to go to court ...), while the decision of the court in the application for divorce is called "the permit", in cases where the couple has agreed on the divorce, refer He did not need the court. Subsequently, the single article of the Law on Amendments to the Divorce Regulations Adopted in 1991, with the requirement of the couples applying for a divorce, referred to the Civil Cases Court, revoked the title "Certificate of Inability to Adopt". (According to the head of this unit article: "Since the adoption of this law, couples intending to divorce and separating from one another, must go to a specific civil tribunal to resolve their dispute. If the difference between the two parties through the court and the judge is two The parties who have chosen the court (as the Holy Quran has stated) has not been resolved, the court will issue them with the official divorce office by issuing a

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

certificate of inability to conciliate. ") It seems that the first paragraph of this article is specific to divorces at the request of the couple, because the decision of the court in divorce is mentioned at the request of the couple in the law on the formation of a specific civil tribunal, and notes 3 and 6 of the single article of the law on amending the rules of divorce (Note 3: The execution of the divorce and registering it at the office is subject to payment in cash for payment of the legal and legal rights of the wife (including divorce, alimony, dowry, etc.), except in the divorce of deportation and mobbing (as much as what is given) and with The consent of the wife or the issuance of a verdict by the husband of the husband's payment of the above mentioned salary. ") It is solely for the wife's financial entitlement and the manner in which the claim is made in divorce at the request of the couple. A divorce from a married couple also involves material proceedings and the issuance of a verdict under the provisions of civil law that give the woman the right to divorce or request divorce.

After the Islamic Revolution, the Law on the Establishment of the Civil Criminal Court of 1978, set forth in Note 2, Article 3, restores the provisions of the Civil Code regarding the right to divorce and the referral of divorce cases to civil and religious law to the rule of Article 8 of the Family Protection Act, as well as a certificate of impossibility The divorce is the same as that prescribed in civil and religious law, but in cases where the husband requests divorce on the basis of Article 1133 of the Civil Code, the court first of all, in accordance with the verses of the Qur'an, The people of Fan Yairida, as well as the Prophet (peace be upon him), refer to the arbitration, and in A divorce will be given to couples who will not be compromised.

Today, family courts are making their decision on divorce in two forms of verdict and evidence of impossibility of compromise. It is worth noting that the verdict is an inscription, but the certificate is an acknowledgment of the status; in the testimony of the impossibility of concluding a court, it merely confirms the existence of the difference between the couples to the extent that it is possible to conclude an agreement, and the nature of the right or the right to divorce The applicant or applicants do not entertain divorce. This point is also reflected in the Family Protection Law of 2012.

Given the evolution of the laws regarding the evidence of the impossibility of compromise, and given the head of the single article of the law on the amendment of the rules on divorce, and in accordance with the Family Protection Law of 2012, which is currently a legal document certifying the impossibility of conciliation, the issuance of Evidence of the impossibility of conciliation applies only to divorce at the request of the couple and in divorces, upon the request of the wife, a judgment must be issued, because, firstly, the court is not entitled to issue a certificate of impossibility of compromise as a period of hostility and diagnosis, but as Certification is based on the actual reality of non-compromise. In divorce at the request of a wife (in divorces on subjects of 1029, 1129 and 1130, a woman has only the right to request divorce, and it is the judge or ruler who, after obtaining the wife's claim to the fulfillment of the conditions contained in these materials. In a divorce based on the terms of a marriage contract, the woman's legal representation on the implementation of the divorce clause is absolute or with the fulfillment of the conditions (Article 1119 of the Civil Code), the wife also provided the reasons. The fulfillment of one or more conditions during the marriage contract in the courtroom requires the judge to allow him, in the event of a breach of a marriage contract, to grant him a parental representation for divorce. It makes itself self-sufficient.) In other words, the intervention of a court in a divorce proceeding from an affiliated woman is governed by the nature which is based on the recognition of the right based on the existing reality. However, in divorce or divorce at the request of a couple, the spouses' duty at the

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

trial and during the refereeing procedures is merely to create an obstacle in their path to delaying the divorce and correction between the couples, and the arbitral tribunal in limiting the rights of the claimants. Therefore, what the court issues at the end of the execution of the formalities prescribed by law is merely evidence of the impossibility of conciliation.

3. General analysis of divorce material in the Family Protection Act 2012

In Articles 24 to 39 of Family Protection Law 2012, the issue of divorce and the conditions for its implementation are discussed, some of which were examined in the two most recent paragraphs, but other issues such as referral, arbitration, divorce, etc. should also be addressed in This should be taken into consideration.

Judgment in the Family Protection Act is not subject to the terms of reference set forth in the Code of Conduct. The time for the referee's review will be determined by the court. Failure to obtain the said opinion will be considered by the court until the expiry of the time limit, unless the parties have extended the time limit or the court considers the extension to be appropriate. The issue that can be dealt with in this article is that if a court requests a divorce at a woman's request that she can claim divorce and to prove herself and herself, the divorce will be proved; this is a divorce or divorce. It is still thought that if there are four and five cases of divorce, it is surely divorced if not divorced. The problem with the Family Protection Act is that it has not yet been able to respond.

Another issue in this area is the agreement on the nature of divorce. The divorce is the agreement that the legislator has recently made and the conditions for it have been considered in the law addopted in 1974. If the woman is an applicant for divorce and has issued a certificate of noncompliance to the office and the divorce proceeds, even if the man is not satisfied with the divorce, according to article 36, he / she will have the right to divorce the sentences, and the absence of the couple will not prevent the divorce. Previously, only a certificate of impossibility was agreed, but now this certificate is separated from the divorce, and the validity of the divorce sentence is six months and the certificate of noncompliance is three months, and because of this, they have considered six months as a means of abuse not for women. Another issue concerns article 31 of this law. According to Article 31 of this law, the issuance of a certified doctor's certificate about the presence or absence of a fetus is mandatory for divorce registration, unless the couples agree on the existence of the fetus. Another important issue here is the conflict between Article 25 of the Family Protection Act and Article 18 of the Law and 8 Regulations, and it is therefore not clear that the proceedings and referral to the counseling unit are either voluntary or subordinate. The other is the difference between Article 33 and 35 between married couples and their divorce. In the case of a couple, there is a justified excuse and the possibility of extending the deadline and the submission, if this is neglected in relation to the wife, and if the aim is to preserve the family, such conflicts do not have much justification.

4. Analysis of Article 22 of the Family Protection Act, adopted in 2012 on dowry

4.1. Examining the strengths of Article 22 of the Family Protection Act

1. Encourage young people to marry and facilitate their ways: In religious and customary ways, Mahri is a gift from a man to his wife, so there is not a certain limit in Islam or laws for it, but it is available to couples. At the same time, Islam approves and encourages light denominations. The government required

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

its legislation to provide marriage facilitation with the creation of culture. Obviously, one of the major factors in helping young people in marriage is to cope with the bad temper.

2. Preventing the collapse of common life: Some scholars believe that the result of imprisonment and imprisonment of men, especially in disproportionate financial conditions and men's income, that is, the collapse of common life. In fact, this article has removed the custodial warrant for a surplus surcharge of 110 coins, but this does not mean that the wife of her mahr will forgive her, but she has been told that she has no imprisonment and can do it in other ways, such as dividing the rest of her custody Receive. In fact, the law of family protection here is to protect the men of the family.

4.2. Review the weaknesses of Article 22 of the Family Protection Act

1. The guarantee of the execution of the seal has fallen under the new law
2. Proving the cause lies with the woman
3. The possibility of spreading fraud and the emergence and occurrence of hidden and transactional deals in order to escape from religion
4. Contrary to the principle of freedom of contract
5. The legislator has used additional words in the text of the material
6. Selection of 110 without any scientific basis
7. Rise in divorce statistics by couples and non-observance of fairness

5. Custody

The new law of family protection represents a new approach to legislation in the context of our family's rights. Ideology, one of the philosophical and ethical foundations of the doctrine of public jurisprudence, as well as the legal system of general law (such as judgments from the courts of justice), reveals its roots in this law in a new way.

5.1 Observing the child's qualification

The last legislator's comments on family dowry and deeds are included in the Family Protection Act of 2012, and this law also has new rules on custody. In Article 4 of this law, "custody and visitation of a child" is one of the issues that is within the jurisdiction of the family court. Therefore, in order to put forward any lawsuit in this regard, he/she should go to the family court and file a lawsuit with the court. In addition, in various sections of the Family Protection Law of 2012, emphasis has been placed on the priority of the child's interest. The person who cares for custody is not necessarily the person who cares for the child's alimony.

The most important thing in child custody is its expediency. That is why the Family Protection Act of 2012 allows the court to review its decision on custody. Therefore, "whenever the court determines that agreements regarding visits, custody, maintenance, and other matters relating to the child are contrary to his or her interests, or if the custody officer refuses to perform the required assignments or prevents the child from visiting the child under custody with the entitled persons, In the case of matters such as the assignment of custody to another or the appointment of a supervisor, the appropriate decision should be made with a view to anticipating the scope of his supervision, with due regard for the child's interest.

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

Article 45 of the Act, which is one of the clear examples of expediency and material based on the material, states: "It is imperative to observe the envy and expediency of children and adolescents in all decisions of courts and executive authorities." This legislator's speech explicitly calls for expediency to be judged, and has made it legally necessary to comply with the issuance of judicial decrees. However, some reference laws such as civil law have neglected this important issue, especially in family law. However, under Article 1170 of the Civil Code, the marriage of a mother would result in his custody of the child, but documentary evidence of the substance of the family law approved by the Family Law Act 2012, if the court determines the expedient of the child to be taken into care of the mother, can Custody to the mother of the child.

5.2. Mother's Custody

The maintenance of children, or the custody in educational matters is both the right and the duty of the parent and, according to the laws, the child custody is up to the parent until the child reaches the age of puberty (in girls 9 and in boys 15) in the sense that for Custody and the maintenance of a child whom he lives apart from each other, his mother is prior to the age of 7, and then the custody is with the father. Also after 7 years of age, in the event of disagreement, the custody of the child, with due regard to the child's best interests, will determine the court, which, except in exceptional cases, cannot deprive them of this right. If the father refuses to the visit of children under the age of seven, the mother may, by referring to the court, firstly demand the couple to pay the child's alimony and, secondly, apply for a temporary order to take the child. A mother's remarriage will invalidate her custody in favor of her father, but in cases where the father has died, the resignation of the mother will not invalidate her custody. In our laws, the "practical ability, moral merit, reason, Islam, and the non-marriage of a mother to another person" are considered as eligible for the right of custody. However, if the father has died, despite the mother's marriage, the custody He will not be denied.

5.2 Analysis of Article 48 of the Family Protection Act 2012

Article 48 of the Family Protection Act is related to the wife's legal duty and pension. In this article we read:

"The amount of salary or pension of a permanent wife of the deceased and children and other legal heritages and how they are distributed in all pension funds, including state, military service, social security and other special funds, are as follows: 1. The permanent wife of the deceased shall have a salary or pension He is entitled to marry, and his marriage does not prevent him from receiving the said salary. In the event of the death of the next husband and the payment of his wife's wages, the highest pension is valid. Note: If a deceased has several permanent couples, salary or pension rights will be divided equally between them and other legal inheritance. 2. The receipt of a pension or invalidity, retirement pension or retirement, as the case may be, by a deceased spouse does not prevent the deceased from receiving a salary or a retirement pension. 3. Female descendants in the absence of a job or husband and children up to the age of twenty and thereafter exclusively in the event of a disabled disabled need or university education. Child benefit, survivors 'insurance or survivors' salary, as the case may be. Your parents will enjoy. 4. Salary of a work or pension of a permanent wife and children and other legal succession of all employed and retired employees in accordance with Article 87 of the National Employment Law as amended in 1966 and subsequent amendments thereto and in accordance with Article (86) of the same

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

law and subsequent amendments. It is divided and paid. Note to the provisions of this article shall also come into force in respect of persons who have died prior to the implementation of this law. "

This point is also highlighted in the Code of Conduct for Family Support, adopted in 2014, and the eighth article of this Code is devoted to this issue: under Article 25, the salary or permanent pension of the dies and the children and other legal successions of all staff employed and retired shall be divided and paid in accordance with Article 87 of the Employment Law of the State approved on 1966 and subsequent amendments thereto. Also, under Article 26, the permanent marriage of a deceased wife does not prevent the deceased's couple from receiving a salary (survivor's pension). Social welfare funds are required to apply for a retirement from the date of entry into force of the law in respect of spouses whose retirement is due to remarriage.

According to Article 27, the deceased's wife will be entitled to a survivor's pension if the next husband's death and the payment of salary (survivors' pension) are due to her. The deceased's spouse is obliged to inform the retirement funds in such cases of the second pension. In case of non-action and receipt of a double pension, the Pension Fund with a lower pension payment will be allowed to collect all the pensions and other expenses that I have received unlawfully on the basis of the last pension received and the current tariffs related to other expenses from the wife. Note- Disability Determination at any of the Institutions, the Disabled Recipient's Reference Office, are also subject to this article.

Under Article 28, children will be entitled to both pensions if they qualify for survivors' pension through any parent: Note 1, Article 48, is not clear. It is not precisely stated in this article whether it is intended that if a wife has a partner with two of her children in the pension, the wife will receive half the amount and the children of the other half, or from the beginning, at the beginning, this amount will be paid to all three.

In paragraph 3, it is also stated that if he had a university degree. If a boy is not able to study at the time of adolescence or because of social status, and then has the opportunity to do so, should he be deprived of all rights, and it would be better if this clause states that the boy who is deprived of his education It was for non-legal reasons. The other thing to be said about this is why did not express the temporary wife? If the legislator claims to seek social status and the marriage of the community, then the question is whether, in the same situation, he intends to establish the claim without support.

6. Competence of family courts

After a legal event occurs, a civil disputes action is necessary against the perpetrator. However, any court is not allowed to handle all claims, but the court is required to perform the duties assigned to it. Therefore, the defendant must be tried in a competent court. In this case, the jurisdiction of the courts is said. The determination of a competent court is in accordance with the law, and any court can only deal with crimes that it has jurisdiction under the law of jurisdiction. (Assyria, 1387: 31)

The family court is one of the courts that has been charged with family matters, such as marriage, divorce, alimony, divorce, custody, etc. In Article 1 of the Family Protection Act 91, we read as follows: "In order to deal with family affairs, the judiciary has a sufficient number of branches of the family court within three years from the date of the enactment of this law in all jurisdictions of the city. The formation of this court in the judicial areas of the department is subject to the appointment of the head of the judiciary according to the facilities. "

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

The article also states: "The judiciary is required to apply for a woman's advisor to all family courts within a maximum of five years, during which time he may use a male judge who is eligible to sit in the family court."

According to Article 4 of the Family Protection Act 2012, the following cases and cases are subject to the jurisdiction of the Family Court, and the other court will not have the right to address the following issues. These issues include claims related to the nomination and damage caused by its disturbance, permanent marriage, interim and marriage permission, marriage conditions, marriage, dowry, marriage, divorce and marriage, divorce, divorce, marriage, divorce Referral, termination and termination of marriage, due date and expiry, custody and visitation of the child, descendants, growth, and removal of the child, guardianship, guardianship, affairs of the supervisor, and the proper property of the confessional, and guardianship of their affairs, alimony Relatives, affairs about missing children, caring for unprotected children, embryo donation and gender change. Therefore, all family affairs should be dealt with in the courts, and no other competent authority will be dealt with.

Conclusion

It can be concluded in the new family support law which is discussed in this study that this law, in addition to fixing the past rules, provides good and proper legal proposals for strengthening the foundation of the family. Advantages such as the registration of temporary marriages, relatively good and coercive punishments for offenders over the underlying fundamental and fundamental issues of the family, and the lack of consideration of the general rules related to issues such as the registration of marriages and divorces associated with public order, the treatment of all Family lawsuits by various judges, the possibility of filing a lawsuit at the wife's place of residence, non-compliance with the procedure of civil procedure, exemption from the payment of costs for prosecutors of the Welfare Organization and the Committee on Relief, the requirement for the presence of a female or male counselor, a prohibition on attendance Children in family court, determination of salary and pension, restitution nomination and damage caused by disrupting the establishment of counseling centers and goals of the law are valuable and commendable.

Along with the undeniable benefits of this law, there are some basic deficiencies that can not be ignored. Probations, such as the failure to enact the Family Protection Act 1974, the failure to codify the rules of procedure for the Family Protection Act, the weakening of the dignity and the statutory guarantees, the promotion of the practice of polygamy and the temporary marriage agency, and the removal of the statutory requirements imposed by the previous law, The duality in the requirement or non-requirement of family courts to observe the procedure of civil procedure law is apparent in this law. The Executive Code of the Family Protection Act of 2012, adopted in 2014, comprehensively addresses the provisions of the Act and establishes acceptable rules for the best implementation of the Family Protection Act 91, but in some areas such as arbitration and related rights Divorce still has ambiguities that need to be addressed to better enforce the law.

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018

References

Amid, Hassan (1985), Farsi Farsi Amid, Amir Kabir Publishing, Sixth Edition, Vol. 2.

Ansari, Masoud, Taheri, Mohammad Ali (2009), Encyclopedia of Private Law, Jungle Publication, Vol. 3.

Emami, Seyyed Hassan, (2004), Civil Rights, Islamiyah Publications, Published 17, 4th. Farahidi, Khalil ibn Ahmad (1410 AH), Book Al-Ain, Qom: Hejrat Publishing, Second Edition, Vol. 5.

Gorji, Abolghasem (2005), Comparative Study of Family Rights, Publication of Tehran University, First Edition.

Homiri, Neshvan ibn Saeid, (1420 AH), Shams al-ulum and Dawa Kalam al-Arab i al-Khulum, Beirut: Dar al-Fakr al-Mu'aser, 1st, Vol. 7.

Jafari Langroudi, Mohammad Ja'far (2003), Civil Law Enforcement Collection, Ganj-e Danesh.

Katouzian, Naser (2006), Family Law, Tehran: Publication Co., Tue 10th Edition, Vol. 1.

Katouzian, Nasser (2008), Civil Rights: Family, Publishing Company, Tehran.

Lamullof, Lewis, (2000), Al-Mundiz, Tehran, Farhan Publication, First Printing, Vol. 2.

Moein, Mohammad (2008), Dictionary, Moein Publishing.

Mohaqeq Damad, Seyyed Mostafa (2005), jurisprudential review, family law: marriage and dissolution, Center for the Publishing of Islamic Sciences, First edition.

Najafi, Mohammad Hassan, (1394 AH), Jawher All-kalam, Tehran: Maktab Islamieh.

Safaei, Hossein, Emami, Asadollah, (1995), Family Law, University of Tehran, 4th edition.

Saroukhani, Bagher, (1996), Encyclopedia of Social Sciences, Tehran: Kayhan Publication.

Received:25 June 2018/Accepted:17 September 2018/Published:24 December 2018