

The Legal and Jurisprudence-Related Essentials of the Wage for the Wife's Work

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Abstract

The various aspects of the rights of women in the family and society have not been elucidated and explicated in terms of Islamic law and jurisprudence up to now. In this legal system, the spouses will have rights and responsibilities relating to each other following the conclusion of the marriage contract; however, since the wife does have economic independence, she is liable to receive wage and remuneration in lieu of what she does as per the implicit or explicit request of her husband. Taking advantage of the wife's work without paying her wage causes damage and harm to her and according to the rule of prohibition of detriment, the vindicator is obliged to pay the wage. Additionally, under certain circumstances, the wife is entitled to receive an amount of money called matrimony donation. On the other hand, the wife is entitled to have a job; however, it is not her responsibility, so it is possible that she prefers to work at home instead of working outside and in this context, job is considered to have a general meaning which should be protected. In the present article, we investigate the issue of wage from the viewpoint of jurisprudence and law figuring out in which cases the wife is entitled to receive wage and matrimony donation. For example, the question is whether she is entitled to receive wage once the guardianship of the child is entrusted to her. Although the woman has rights and responsibilities in the family, having a job, including one at home or outside are not among her obligations and therefore she is entitled to receive wage.

Keywords: taking advantage of the wife' work, wage, matrimony donation, the principle of the prohibition of detriment

1. Introduction

Family is the only legal system which has existed since the beginning of human life; therefore, the jurists have tried to explicate all of its jurisprudence-related judgments and regulations for the people. However, it's still possible that problems and questions be proposed with regards to the foundation of family. Taking advantage of the labor of women during the matrimonial life is one of these questions. Like many other contracts, the contract of marriage has certain fundamentals. The contract of marriage does not cause the wife to lose her financial independence; however, since matrimony is the objective of the contract of marriage in such a way that the spouses will have rights and responsibilities with regards to each other, the husband will not have any ownership over the possessions, labor and earnings of the wife and cannot exploit him like a laborer or mercenary. From the other hand, the occupation of the wife outside home faces some restrictions and this may make her unable to assume job and fulfill her responsibilities. That's why the wife may opt for the work at home. Some of these jobs cause the consolidation of the bases of family and some of them are not within the responsibilities of the wife. Here lies the question: is the wife entitled to receive wage for the actions she does? The pivot of the investigations in this article is the agreed theory of the jurists and the civil law.

2. The Concept of Wage and Labor

Al-ajr (wages) is the plural form of Ajr (wage) and is the equivalent of the labor. (Ibn Manzour, v. 1:77). This expression is used for the purpose of benefit and not detriment, like the Quranic verse which says "They shall have their reward from their Lord" (Raqeb Isfahani, 1991:10). The word "Ajr" (wage) has been used in the Holy Quran 97 times. The meaning of wage or earning is salary and remuneration. (Dehkhoda, 1993, 84)

It's possible that the term wage, salary or quantum meruit be generally applied to the entire financial

remunerations which are paid by the husband. In this case, the marriage portion is also called wage (Give them their dowries justly). However, marriage portion and alimony are legal terms which are not relevant to our discussion. By speaking of wage and salary, we mean the services and labors which the wife provides as per the request of her husband. Therefore, marriage portion is one of the financial rights of the wife and she is entitled to receive it simply with the conclusion of the marriage contract and without doing anything. The wife can receive the marriage portion even before the intercourse and by exercising the right of lien.

Lexically, labor is applied to every kind of action which is done intentionally. So, labor is different from action, because action might be done unintentionally (Raqeb Isfahani, 1991:587). Labor is different from possession, since possession is something which can be felt externally and is prone to seizure and detainment; however, although labor can be described in terms of possession and has an equivalent, is not detainable like possessions. We will describe the labor's capability of being owned later on.

3. Woman's Economic Independence and the Right of Occupation

With regards to the women's occupation, what comes first is the principle of women's ownership. In the dark ages of the Arab world when the women's right of ownership was not recognized, Islam expressively emphasized on this right. Prior to the emergence of Islam, women were considered as commodities and distributed among the male children in the vein of the residual. In the verse 32 of the Sura Al-Nisa, the Almighty God has recognized women's right of having a job and independent income: "For men there is reward for what they have earned, (and likewise) for women there is reward for what they have earned." It means that the men can benefit from what they have earned and likewise the women can derive benefit from what they have earned. By portion we mean the benefit and advantage which one takes of his business or agricultural labor. (Tabrasi, 1985: v. 3, 64) and (Tabatabaie, 1996: 337) and (Makarem Shirazi, 1985: v. 3, 64).

By paying attention to the terms "advantage" and "portion", we can precisely underline the women's right of occupation. Therefore, in the Islamic law the woman not only has the right to have a job, but also whatever she earns belongs to her. Additionally, the women's work outside home is depicted by the Holy Quran. In the verse 23 of the Sura Al-Qasas, the story of providing water from the wells for the sheep outside the farm by the daughters of Prophet Shuayb who were shepherds and their occupational interaction with the men is emphasized, endorsing the women's right of having a job. It means that the women's right of having job is not denied by the Holy Quran. "He brought you forth from the earth and settled you therein." (Verse 61 of Sura Hud)

In this verse, it's recommended to the whole people including women and men to work on the land and make it habitable.

Therefore any radical viewpoint regarding women is illogical. Correspondingly, some of the authors believe that women should not follow a masculine pattern in their occupational life and compete with the men directly because a change in the occupational opportunities disintegrates the structure of the family and a change in the women's role destructs the affairs of the society. (E'zazi, 2001:125). Moreover, the opponents of the presence of women in the society believe that the contact of woman with the outside world brings with itself irreparable damages and threatens the security and existence of the family which constitutes the spiritual infrastructure of the behavior (Rosenbaum, Harry: 1989, 32). Such ideologies as feminism are radical and cannot conform to the law of creation and the nature of the woman. The constitution of the Islamic Republic of Iran does not prevent the women from working outside the home. Islam uplifts the woman to the point that she can recover her human position in the society and disentangle herself from being an object and assume responsibilities in the structure of the Islamic government in accordance with this growth (Imam Khomeini, 1993: 210). Although there are differences between women and men, this difference does not cause discrimination in their rights. The law of creation had a different intention by brining into existence these differences. The law of creation has generated these differences to strengthen the familial links and lay the groundwork for their solidarity more effectively and divide the familial rights and responsibilities of the husband and the wife (Motahhari, 2007: 147). Therefore, wife's occupation should not lead to the dissolution of the family. At any rate, the women have always been working; however, by occupation, we mean working for wage and remuneration (Ja'fari Langeroudi, 2006: 399). The issue of the occupation of women has been explored in the sociological terms along with other phenomena. Like any other social phenomenon, this subject is also the result of worldview and ideology. In a capitalist system, the main objective is the dominance of the power of capital over the society and the human welfare is also a goal. Therefore, the power of women should not be neglected since they constitute at least half of the population and are the best, most inexpensive and contended workforce for labor, offices and services. This notion has been admitted and acknowledged by the historians and sociologists. In this regard Will Durant says: "the industrial revolution in the first place industrialized the women to the extent that was unclear to everybody

and nobody could even think of. Women were cheaper workers and the employers preferred them to the rebellious and expensive men (Durant, 1993: 92). Therefore under such circumstances, the slogan of the equality of women with the men was welcomed by the employers. However, this would not impede the fulfillment of the women's rights. Nevertheless, the occupation of the women is among the important and controversial legal and social phenomena because one of the representations of the social participation of women is actually their occupation. If we want to engage the women in the society, we should lay the groundwork and prepare the facilities for their occupation. The less the restrictions are, the more the extent of participation will be. This is one of the criteria which the Western world has proposed for determining the social stature of the women (Shermanwood, 1987: 141). Moreover, the women's participation in the economic activities not only affects their mindset, but the working women will be more bright-minded than their jobless counterparts and deal with the life affairs better and also have an effective mental stability during the middle years of marriage when the children are grown up and leave the family.

Researchers have demonstrated that using the workforce of women leads to the scientific and economic growth of the society. Following the World War II and with the massacre of so many men as a result of the war, the need of countries for immediate renovation and also the need of unguarded women, provided opportunities for the women to take part in production sector and therefore the number of working women in the industrialized countries increased dramatically.

For instance, women between 15 and 64 constitute 52 percent of the workforce in Germany. This figure had reached to 45 percent in the United States (Kianshahr, *ibid*). In any case, today the women, who constitute half of the population and human resources, can be considered as effective factors in furthering the sublime human objectives. Therefore, motivating the women through paving the ground and empowering them through education helps them enhance and improve in the society. Motivating people is generally effective in occupation and the people with higher motivations perform better than those who are not motivated (Danesh, 2006: 34). Moreover, equal opportunities with the men can decrease their level of poverty. So, if the government creates equal opportunities for the women, it will eradicate poverty among them (Rostami, 2004: 196). Meanwhile, in a family where both man and woman work, there will be more chances of distancing from the poverty threshold. However, it's possible that the women prefer housework to preserve the foundation of family and raise the children better or reduce the time they spend outside and stay with the family members more. For this very reason, occupation outside home and earning wages is not considered a responsibility for women in the perspective of Islam; however, this does not mean that they shouldn't be paid in lieu of their labor. In any case, the labor and service of the woman should not be unpaid because the exclusive labor of the woman is serving the survival and the exclusive labor of the man is serving the wife and children. There are chances that he has other works to do, but based on sapience and education, all of them follow these principal works.

4. The Basis of Remuneration

4.1 The Labor of the Wife

Is the labor of the wife at home subject to financial compensation? Is the husband obliged to pay wages if he takes advantage of the labor of the wife in a way or another? In order to respond to this question, we should pay attention to the definition of property. However, it should be said first that with regards to the meaning of proprietorship, the capability of being owned, estate and property, what counts is the customary and lexical meaning and we should refer to the customs and the philologists as these issues actually don't have religious truth (Naraq, 1987: 112). Property is what has economic value and can be transacted. Customarily, property is referred to something which the people have tendency toward and consider as necessary keeping it for being used at the time of need (Najafi, undated: 37, 48). Some of the jurists have proclaimed that property is something in lieu of which there's a property. (Hosseini Ameli: v. 4, 220). However, there are criticisms with regards to the abovementioned definition since it may create a loop (Shahidi: 2006, 284). Nevertheless, it is an appreciable definition. According to this definition, it should be said that whatever to which a property belongs does have economic value. Therefore the labor of the wife has the capability of being owned and can have compensation. In a matter of fact, the labor of the women is considered to be a property although labor and property are two distinct concepts (Safaei, 2006: 133).

For instance, the Article 214 of Civil Law specifies whether the object of transaction is property or labor. However, labor has economic value like property. Just like there is an equivalent for property, labor also conventionally follows the same rule. In any case, the labor and interests of the individuals are respected and nobody is entitled to cause damage to them. Even some jurists believe that the incarcerator is responsible for detaining and incarcerating someone who has a certain job and occupation because the labor of that individual

has been lost and his interests have been obstructed (Khouee, undated: 36,2). It's also said that if somebody hires an individual to pull his teeth and doesn't refer to him on the specified time while the dentist has the readiness for the job, the hirer will be responsible for the wage and remuneration of the dentist because the interests have value and the capability of being owned; therefore, as the individual is responsible for taking advantage of the interests, the loss of interests will be followed by responsibility, as well. (Tabatabaei, 2001: 531)

As a result, it can be said that if a contract is already in place between the spouses, then the contract will be abided by and the wife will receive her wages. However, on condition that there's not any contract, if the wife, as per the order of the husband, performs an action which is subject to wage and it can be comprehended according to the evidences and circumstances that the very basis of paying the wage is implicitly agreed, such a utilization will be considered as a contract which is also called pseudo-contract, because its equivalent is not clear. It is called constructive contract in the legal system of Britain and the U.S. which can be translated as suppositional contract as well. This type of contract is a responsibility that the rights emerge and come into place irrespective of the inclination of the parties and simply on the basis of the expediency of logic and justice. They are simply based on the hypothesis of the law and are not actually considered to be contractual obligations. Such cases are unjustified use in general terms. (Safaei, 1985: 13) However, some people have considered it a cause of tortuous liability (Emami, 2003: 412, 1). In any case, if utilization is unlawful and illegal, it will certainly be a cause of tortuous liability. The utilization is unlawful when an individual adds to his property at the detriment of somebody else and without his consent; whether the object of utilization is property or labor. If someone obtains something as a result of an invalid contract or takes possession of the result of the efforts of somebody else without his consent, he has done unlawful utilization. However, if the utilization is lawful in the form of an implicit agreement which can be seen as a primary condition, then it will be binding, because the action of Muslim is respectable. "The action of Muslim is respectable as far as he does not intend to do a gratuitous act" (Tabatabaei, 2001: 392). According to the principle of respect, somebody who derives benefit from the action of somebody else should compensate for it. (Najafi, undated: 335, 31) and (Fazel Lankarani, 1992: 436, 2) and (Hashemi Shahroudi, 2002: 297) and (Makarem Shirazi, 2002: 395, 1). The principle of respect for the property and action of Muslim means that the property of Muslim cannot be infringed for free and his rights cannot be violated because it's not acceptable to violate his rights. Likewise, if he does an action, it's respectable and its wage should be paid (Mostafavi, 1996: 123). Therefore, any disturbance which leads to the loss of property or labor should be made up for. There's no difference between the property and actions of a free man because the labor of the free man is also respectable (Makarem Shirazi, 1990: 218, 2). However, some scholars believe that citing the principle of respect for guaranty is seriously difficult, and consider the main foundation the treatment of sapient people and their department. If there's order and command, guaranty will be irrefutable, such as the cases of porter or barber where specifying the wage and fare is subject to the parties' reluctance and the quantum meruit is paid after the job is done (Khouee, 2001: 392). However at any rate it's possible to generally cite the jurisprudence-related principle of respect as a basis for guaranty based on the foundation of the sapient people (Alqadiri, 1998: 549). Additionally, the lack of guaranty and lack of compensation causes the loss of laborer or the proprietor and such damage to proprietor is forbidden in the religion on the basis of the rule of prohibition of detriment (Maraqī Mirfattah, 1996: 489). At any rate, labor has economic value and will be among the demonstrations of unlawful ownership if unpaid. From this viewpoint, there's no difference between the labor of the man and that of the woman. Therefore, the labor of the wife is customarily economically valuable and will be subject to compensation and wage under the following circumstances.

4.2 The Obligations of the Wife

Obligation (Taklif in Arabic) comes from the lexical root of "Kalaf" which means to give order on something the fulfillment of which is difficult (Javadi Amoli, 2006: v. 2, 20). Obligation is actually the legal bans and orders which are also called legal liabilities (Ja'fari Langeroudi, 2002: 177). The obligation of the wife means that she must obey the husband in the affairs which are obligatory for her (Imam Khomeini, v. 2: 305). Submission in particular is one of the responsibilities of the wife. Exclusively, submission means that the wife accepts intercourse with her husband conventionally and doesn't refuse to have relations with her except for the cases that she has justifiable excuses (Safaei, 2007: 132). At any rate, the wife should be submissive to her husband in matrimonial affairs. If the wife doesn't obey her husband in these affairs, then she will be called a "woman who refuses to fulfill his marital duties" (Imam Khomeini, 1998: v. 2, 305). As a result, abandoning the duties which are not obligatory for the wife does not cause refusal to fulfill marital duties. If the wife abandons the home affairs and the requirements of the husband which are not related to sexual affairs such as sweeping, tailoring, cooking, watering and laying the bed, it will not be considered as refusal to fulfill marital duties (ibid). Consequently, if we intend the general meaning of submission, the abovementioned items are not counted as the

cases of submission and the husband cannot force the wife into doing these jobs. As to breast-feeding also the majority of the jurists believe that it's not the responsibility of the wife (Najafi, undated, v. 31: 273). However, some jurists believe that during the first three days of the birth of the child, the mother is obliged to breast-feed it (Bohrani, v. 5: 72). From the viewpoint of Imam Khomeini, the mother is not obliged to breast-feed the child for free and even being paid does not make her obliged to do so. However, if the breast-feeder is exclusively the mother, then she will be obliged (Imam Khomeini, v. 2: 313).

5. Terms of Receiving Remuneration

Following the conclusion of the contract of marriage, the wife starts her joint life with the husband. The wife may embark on doing things to increase the mutual congeniality and also may do things as per the request of her husband. It's taken for granted that the things which the wife does voluntarily are not subject to wage and remuneration even given that the husband and the children may benefit from it. According to the remark 6 of the law of amendment of divorce regulations ratified in 1992, the request of quantum meruit of the matrimonial days upon divorce was proposed, but the lawmaker has ratified a single-clause bill on January 13, 2007 as follows:

One remark will be added to the article 336 of civil law ratified on May 7, 1928 as follows: if it is proved to the court that the wife has, as per the order of her husband and without the intention of gratuitous act, performed tasks which are not religiously considered to be her responsibility and are customarily followed by remuneration, then the court will calculate the quantum meruit of the tasks done and issue a decree that it should be paid.

It seems that if the lawmaker had not foreseen such an amendment, the contents of the article 336 of Civil Law were sufficient for claiming the quantum meruit. Nevertheless, the lawmaker ratified the abovementioned amendment in line with the article 336 of Civil Law and jurisprudence to solve every ambiguity, because the majority of the jurists believe that the wife is entitled to receive quantum meruit at any rate (Golpayegani, undated: 498), (Makarem Shirazi, 2002: 398) whether she has requested divorce or is living with her husband without any problem.

Anyway, the conditions necessary for the wife to receive wage in lieu of the tasks she has performed are as follows:

5.1 Order or Request of the Husband

The very issue of respecting the property or labor does not necessitate guaranty unless a certain job has been ordered or requested. (Tabatabaei, 2009: 392) and (Imam Khomeini, 1986: 56). In these cases, the guaranty of the action is conditioned on order and commandment and there would be no guaranty without order and commandment (Rashti, undated: 119). In fact, someone who performs a job without the request of somebody else has embarked on abolishing the respect to his own action according to the principle of action and has accepted not to receive wage and aborted the guaranty. Additionally, the principle of prohibition of detriment which necessitates guaranty and the payment of compensation would not be applied in cases that the owner has aborted the respect to his action and made steps which are to his detriment (Mirfattah, 1996: 488). Therefore, according to legal provisions, in order to realize the utilization and taking advantage of the labor of the wife, it's necessary that the husband give orders to his wife. The article 336 of the Civil Law stipulates that whenever an individual takes steps to carry out an action which is conventionally followed by the payment of wage or that person is habitually prepared for that action, the doer will be entitled to receive wage for his labor unless it's figured out that he had an intention of gratuitous act.

Order and request are opposite of silence and thus are important. Therefore, based on the emphatic expression of the article 336 of Civil Law, silence, passivity, willingness, receiving and making use of the action done without prior request cannot make the wife entitled to receive wage. Provided that order and request to the wife by the husband are denied, the wife should demonstrate the order and the request as a claim in accordance with the principle of lack.

5.2 The Intention of Non-Gratuitousness

According to the content of the article 336 of the Civil Law, should the wife obey the order of her husband without compulsion and reluctance and simply with the intention of gratuitous act and for free, she will not be entitled to wage and the husband will not be considered liable. As a result, the entitlement of wage in the guaranty of the husband with respect to taking advantage of the labor of the wife is conditioned on the non-gratuitousness of the labor of the wife. (Najafi, v.31, 336) and (Fazel Lankarani, 2001: 437) and (Rashti, undated: 120). On condition that there's a conflict over the gratuitousness or non-gratuitousness of the labor, the statement of the wife should be accepted in accordance with the principle of gratuitousness of the labor. Therefore the claimant of gratuitousness should prove his claim. Albeit, if gratuitousness is subject to suspicion,

it should not be assumed that the presumption of innocence is in place because the principle of non-gratuitousness is dominant over the presumption of innocence as the principle of non-gratuitousness is predicated on logical and conventional deportment and current evidence and is considered to be one of the foundations which governs the presumption of innocence which is a legal action. (Mohaqqeq Damad, 2003: 218) and (Tabatabaei, 2011, v. 5: 146)

6. Matrimony Donation

Another type of the financial demands of the wife is matrimony donation which is in line with the quantum meruit of the days of matrimony. If it's impossible to specify the amount of quantum meruit for every reason, for example if the wife intends to carry out a gratuitous action, she will not be liable to quantum meruit and that's when the turn comes to matrimony donation. Matrimony donation is paid when the wife has requested divorce and her request of divorce is not due to her violation of wifhood duties or her misdemeanor. The court specifies an amount of money as the matrimony donation or pardon by taking into consideration the financial status of the husband and the efforts of the wife and then the husband will be liable to pay it to wife completely.

7. Conclusion

As it can be seen, in the viewpoint of the lawmakers and jurists, the wife's entitlement to wage with regards to the actions which she does as per the order of her husband is indisputable in any case; whether the spouses are living together or are getting divorced. The action of Muslim is respectable. According to the principle of respect, someone who derives benefit from the action of somebody else should compensate for it. The principle of the respectability of property and the action of Muslim mean that the property of Muslim cannot be infringed for free and his rights cannot be violated, because the violation of his rights is not acceptable. Moreover if some labor is done by him, it's respectable and the relevant wages should be paid to him. Therefore, if any disturbance causes damage and harm to the property or action, it should be made up for. However, if the spouses are getting divorced, then the wife is not only entitled to quantum meruit, but also if the divorce is requested by the husband and is not because of the wife's violation of her matrimonial responsibilities and is registered in the marriage deed, then the wife is entitled to receive half of the property of her husband during the matrimonial life.

However, if the wife is not entitled to quantum meruit because of the lack of one of the conditions in a divorce which is requested by the wife and on condition that the divorce is not due to her violation of matrimonial responsibilities or misdemeanor, then the court will specify an amount of money as the matrimony donation according to the financial status of the husband and the pains which the wife has taken and the husband is obliged to pay this amount of money.

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