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Does The Right Of Divorce Belong Only To Men?

In the perspective of Islam, marriage has been emphasized as a holy relationship and a pleasant tradition, whereas divorce is mentioned as a most unpleasant allowable action.

Divorce is the last solution to end the excruciating joint life devoid of affection. Therefore, all other appropriate ways for protecting the family should be carried out before the solution of divorce is applied.

From a study of civil laws applicable in Iran, which are taken from the Islamic jurisprudence, it is clear that the request of divorce can be made by men and by women or jointly by both of them together and to be considered by the court. The decision on a divorce application will be made by the court or other competent authorities and in accordance with the regulations and special conditions.

For more explanation, attention is drawn to, the applicable text of the Civil laws in this area as follows:

Article 1133 of Civil laws: a man can ask in accordance with the terms of this law, for a divorce and to be relieved of his wife.

Note: A woman can also request for divorce to the court with the conditions specified in articles 1119, 1129 and 1130.

Also, the woman can receive the right of divorce as a stipulation in the marriage contract which is completed before the marriage ceremony is carried out.

Article 1130: in these cases, woman can refer to the judge for a divorce:

If it is proved to the court that continuity of the married life can be harmful to the couple and, therefore, to prevent harm and hardship, the court can order a divorce Note: Poor conditions and hardship in this article means the creation of a situation that makes the life of the woman difficult and intolerable. The following are some examples of hardship which the court should consider in making their decision:

- 1. Leaves the wife for 6 months continuously without providing maintenance or leaves her for 9 months in a year without any acceptable reason.
- 2. Addiction to drugs or alcoholic drinks that hurt the foundation of the family unit and it is not possible for him to stop, according to the view point of a physician. And also when the man does not fulfil his commitment and after stopping the addiction, he again starts using the drugs, or alcohol. In such case, on a request by the woman she can be granted divorce.
- 3. Under certain conditions if the man is imprisoned for 5 years or more.
- 4. Beating or other kinds of abuse of the woman that normally woman cannot tolerate.
- 5. All kinds of hard psychological or profuse illness that hurt the joint life of the couple.

The cases that are mentioned in this article do not prevent the court from pronouncing a divorce, when in other cases the hardship and improper conditions are clear.

The other important point to note is that the action of divorce should be carried out only after issuance of an appropriate certificate by the court that it is not possible to reconcile the differences between the husband and the wife. The request for this certificate is the right of both the husband and wife.

In article 8 of Family Support laws there is provision that a man or woman can request the issuance of disagreement certificate and the court after accepting the reasons should issue disagreement certificate:

- 1. Where there is agreement between the couple for a divorce.
- 2. Where the Husband refuses paying her alimony and considers it as an unnecessary matter. Also, in other cases where the husband does not fulfil some of the rights of the woman and it is not possible to require him to do that.
- 3. Where there is deference of woman towards her husband.
- 4. Misconduct or abusing the interaction and relation of the couples that make the continuity of living intolerable for both sides.
- 5. All kinds of hard psychological or profuse illness that hurt the joint life.
- 6. Madness of one of the couple where the revocation of marriage may be impossible.
- 7. Non-compliance with the order of the court regarding the prohibition of taking a job or profession that is not proper for the solidarity of family or dignity of the husband or wife.
- 8. Sentencing of the husband or the wife to certain penalty which comprise 5 years imprisonment or more or a pecuniary fine which he is not able to pay leading him to be detained or imprisoned for five

years or more.

- 9. Any risk of harmful addiction, recognized by the court that family solidarity is jeopardized and it is not possible to continue a meaningful matrimonial relationship.
- 10. When the husband decides to have another wife or the court recognizes that he does not treat all the wives with justice and equity.
- 11. Either of the couple leaves the family life. The court should recognize this matter.
- 12. Certain condemnation of anyone of the couple for any crime that is against the dignity of the family.

The recognition of which kinds of crimes are against the dignity of a family and according to the situation of both sides and other factors is to be determined by the court.

- 13. If either one of the couple is sterile, at the request of the other side, the court can give the order for divorce. Also, because of their special physical conditions, the couple is not able to bear a child.
- 14. Remaining absent in accordance with civil code article 1029.

Note: The divorce can be issued according to the Divorce laws and Disagreement Certificate only if the parties agree officially that the matter can be referred.

In the light of what is said, it is clear that the right of divorce and issuing disagreement certificate from the perspective of civil law recognizes both, man and woman. But the performing of divorce should be done by the court or any righteous person.

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