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**THE COMPARATIVE ANALYSIS OF WIFE'S FINANCIAL RIGHTS IN JUDICIAL  
SYSTEM OF IRAN AND THE CONVENTION ON THE ELIMINATION OF ALL  
FORMS OF DISCRIMINATION AGAINST WOMEN**

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**ABSTRACT**

The aim of the present research is doing a comparative analysis between wife's financial rights in Judicial system of Iran and the convention on elimination of all forms of discrimination against women. Considering the mentioned aim, one of the most important issues which have been expressed as an example of discrimination between man and wife is the legal relationship between the two. To administer justice on women's right is one of the most important concerns of Islamic Republic of Iran. After 1979 revolution, a great deal of effort has been done to restore women's legal rights to help her have her main position in the society, especially in financial affairs. Providing the finances of family in Iran is a unilateral commitment and no duty is imposed on woman on this matter. Some experts have remarked that most of jurisprudence laws have discriminated against women and it is necessary for Iran to join the convention on the elimination of all forms of discrimination against women. Considering the subject of this research, the library descriptive-analytic method is applied.

**Keywords: Wife's financial rights- Judicial system of Iran- convention on the elimination  
of all forms of discrimination against women**

**INTRODUCTION**

A brief look at the course of history leads us to the fact that women have always had unequal rights in comparison with men.

Although there have been times of matriarchy throughout the history and women were of high position in their tribe, but during the

other eras, they have been subject of social and legal violence, as they had no will against a man's demand and were the victims of harassment, assault and battery, and even murder. They suffered from lack of any kind of economic and financial rights as well, and their wage actually belonged to their spouses or fathers.

The transformation in women's rights which was brought by Islam is of considerable interest, since the non-Islamic civilizations did not give such right to women till 12 centuries later. Due to the significance of family in realizing individual and social goals, and the central role of woman in the structure of family, Islam protects women's rights in a way that it covers social, humanly and even spiritual aspects of their life. So all the governing principles on the family system and collective system are carefully considered in order to help family and society fulfill their duties and protect the religion and preserve themselves and their future generation.

Nowadays, one of the most important which has concerned the international communities is to protect and observe women's right, consider right equality between men and women and elimination of discrimination against one gender. This movement commenced from the beginning of 20<sup>th</sup> century second half in order to fulfill

women's rights and eliminate discrimination against them, and accelerated in two recent decades; by enacting laws in the form of declarations, conventions (such as conventions on the elimination of all forms of discrimination against women approved in 1979 by United Nations General Assembly, and the fourth World Conference on Women), they attempted to forbid all kinds of oppression, discrimination and inequality.

One of the salient points of these meetings was the subject of women's financial rights and their access to wealth resources. The majority of these statements about economic equality between men and women and emphasis on their full capacity in achieving finances, concluding contracts, possessing and directing assets, the rights for receiving bank loans, mortgage and other credits and recommends governments to help them reach the mentioned aims by legal and administrative revisions. There are challenges among various ideologies, religions and culture on financial equality between two genders in access to financial resources, job opportunities, their inheritance, etc. Some of them believe that this kind of equality is not only practical and appropriate, but also think it is not to women's benefit, so they procrastinate about joining the convention and observing its regulations. Islamic Republic of

Iran has enacted laws in accordance with Islamic teachings and decrees. For instance, article 9 of act 3 of Constitution binds the government to apply all its authority to eliminate improper equality and provide fair possibilities in both corporeal and spiritual aspects.

Thus, the aim of this article to clarifying the legal principles of wife's financial rights in Judicial system of Iran, the convention on elimination of all kinds of discrimination against women and also doing a comparative analysis between wife's financial rights in Iran and the convention. Several researches have been conducted on the topic. For instance, **Heidari et al.** did a research with the title of "wife's alimony in laws of Iran, France and Sweden". The aim of this research is doing a comparative analysis on "financial relationship between couples" in legal system of Iran, France and Sweden, especially some critical items such as alimony. Considering the desired aim, one of the issues which exemplify the discrimination between men and women is the legal relationship between them. In order to explain the different aspects of this discussion, the relationship between wife and husbands in financial and non-financial affairs have been examined, of course, marriage is not a financial institution and any of the couples does not think only

about his/her financial damage or profit. In Judicial system of Iran, the principle of couple's financial dependence is the foundation of financial relationship between wife and husband and each of them has total authority in achieving and managing their properties. But in the legal system of western countries such as France and Sweden, the property sharing system is applied and the man is the head of this unity and has authority over the properties of them. In full property segregation, the man is allowed to possess wife's properties unless wife rejects it explicitly. This article discusses the various legal systems in the aforementioned countries.

In 2009, Sajadi Amin conducted a research titled "the financial rights of the couple". This researcher stated: "due to its comprehensibility, Islam has regulated and observed the relationship of man with his/her peers in addition to his/her duties before God in order to realize the ideal society. One example of Islam social laws is the rights and duties that the members of a family, especially a husband and wife can enjoy them. In his article, he presented the financial strategies of Islam for protecting the families.

In 2008, Kazemi did a research with the title of "financial protection of women in the family law system from the view of Islam". In this article, woman's financial rights

including main and inherent property, subordinate property and supported property were discussed and the main difference between Islam judicial system and other judicial systems in recognizing these financial rights were studied. The findings of this research revealed that in the financial law of family, supporting women's rights is associated with thorough observation of spiritual rights and all governing principles of family and collective system have been considered. In order to fulfill the aforementioned goals and to protect women's rights, special properties, special protective policies and methods for preventing the development of poverty have been included to provide women's legal security in financial and economic affairs.

Parsa conducted a research in 2002 with the subject of "discussion on wife's rights (dowry and alimony) based on Imamieh jurisprudence and four branches of Sunni". Judiciary system of Islam based on its five branches has foreseen special financial privileges for wife, which is almost unique in comparison with western judiciary systems. Dowry and alimony are the examples of such privileges. The religious legislation of these financial rights can be considered as privilege for wife and consolidates her position in the family, but in some cases the civil laws for women's

rights have not been observed despite the existence of Quran verses and narrations and jurisprudence laws. The results of this research showed that the alimony should be considered and evaluated according to time, place and requirements of couple's livelihood.

### **The importance of research**

Half of population of any society consists of women, and they have suffered from many oppressions and aggressions through the history. Many improper traits have been attributed to Islam on women's rights. Meanwhile, the axes of women's rights, such as their financial rights have not been precisely mentioned and it has caused the cultural aggression from the wicked writers which intend to introduce an unpleasant portrayal of Islam. Though some researchers have written articles on this widespread issue, but it seems necessary to publish a comprehensive research on defending the lofty values of Islam and opposing the mischievous attributions to Islam's view on women's financial rights. So, the aim of this article is to clarify the principles of Islamic law about women's financial rights and compare it with the acts of convention on elimination of all kinds of discrimination against women.

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**An overview of convention on elimination of all kinds of discrimination against women**

In spite of the efforts for observing and adjudicating women's rights in western countries, European governments used to ignore these rights all together until the early of 20<sup>th</sup> century. But this century saw the victory of women's equality movement. In 1918, women of England managed to obtain vote right, which was granted to women in 1920 in U.S.<sup>1</sup>The years after 1945 is known as the years of significant development of theory of equality between women and men, so that the Human Rights Declaration of United Nations in 1948, explicitly stated the subject of equality between women and men for the first time. Following the declaration, convention of women's political rights in 1952 and the conventions of consent for marriage were approved under the influence of feministic movement in 1060s and 1970s. Nevertheless, the advocates of equality between genders were not satisfied by this treaties and documents. So, United Nations General Assembly approved the Declaration of Elimination All Kinds of Discrimination against women in November 7<sup>th</sup> of 1967 in order to ensure women's rights and achieving more strict documents.<sup>2</sup>

**The content of Convention on Elimination of All Kinds of Discrimination against Women**

This convention includes one introduction and 30 provisions. The provisions can be divided into two major parts: the first part includes provisions 1 to 17 which discusses the women's rights in different fields, and the second part includes provision 17 to the last provision which explains the guarantee of implementing convention contents and the formal regulations of approving and incorporating into the conventions, enforcing the conventions, its relation with other human rights treaties and such items.

Since the first part is of more importance, the opinions of advocates and opponents of incorporation into the convention are discussed; therefore, we express the content of provision 1 to 8 which contains the substantial regulations.

**Woman's property and financial dependence in convention**

One of the mentioned matters in the convention is eliminating all kinds of discrimination against women, women's financial rights and their access to the wealth resource. In this conventions, the full capacity of woman and his equality with men in achieving financial resources, concluding contracts and the competence for possessing

and managing properties has been emphasized and the governments have been recommended to reform their current laws and practical procedure to fulfill this requirement.

The convention in Article B of provision 13 requires the necessary actions of member governments to eliminate the discrimination against women for enjoying bank loans, mortgages and other forms of financial credits. Also, the provision 15 of convention states:

1. Member governments shall accept the equality of rights between men and women before the law.
2. Member governments, civil affairs, legal authority, and the practical opportunities shall be equally accepted for both genders.
3. Member governments shall accept to nullify all contracts and other types of private documents which had previously limited the legal rights of women.

### **Woman's financial ownership and dependence in the view of Islam and judiciary system of Islamic Republic of Iran**

One of the most important principles of Islam judiciary system is the equality between men and women, unless an exception is mentioned for the sake of their own benefit. In judiciary

system of Islam, woman has no financial duty before man. Meanwhile, she enjoys economic and social independence.

Women's financial rights in Islam include three types of property: 1. Main and inherent; 2. Subordinate, and 3. Supporting. The inherent properties are the ones of which the women enjoy same as men and are referred to as the right of acquisition. Subordinate properties belong to women as the result of genealogical relationship and include some items such as inheritance and atonement (blood money). In this part, there is no difference between properties of men and women, but in the amount of property some discrepancies are observed due to the financial responsibilities which Islam has imposed on men.

### **Comparative analysis of examples of women's financial rights in judiciary system of Islam and convention**

#### **Women's inheritance in Iran**

In ancient Iran, when the Sasanid dynasty were ruling, the families are controlled and managed by patriarchy system and the authority and dominance was in the hand of the father and his sons, and the properties and wealth of the family were put under the authority of the eldest son after father's demise. Dr. Mousa Amid quotes from Professor Belushe: "almost in laws of all

ancient nations of Arian race, the general rule stated that the only illegible heirs are the sons and the women were deprived of inheritance. For instance, the family inheritance was to transfer to the eldest son of the family, while none of the women obtained any share of inheritance. In Ancient Rome, the inheritance right was not officially recognized for women. The inheritance would be automatically transferred to the eldest son and his brothers and sisters were obliged to have their livelihood all together under the eldest son's authority.

In such circumstances which were depriving women of their financial and social rights, Islam not only granted humanly, social and civil to women to augment her position, but also officially determined some reasonable share of inheritance for all female members of the family.

#### **women's inheritance in the convention**

The first provision of the convention declares that any kind of difference, exception and limitation relating to gender is considered as an example of discrimination, and the second provision asks the member governments to forbid all types of discrimination and take proper action to nullify or alter all the regulations, habits and procedures which induces the discrimination against women, and punish the individuals which violate these

regulations. In provision 15, member governments should be committed to provide and protect rights of men and women equally. This legal protection includes civil affairs, legal procedure, commercial contracts and similar items. Although this provision have not explicitly mentioned inheritance, but the equality between two genders have been implicitly stated in all properties. Also, in 274 paragraph of Beijing documents, elimination of any kind of injustice regarding the inheritance rights between men and women has been insisted on.

#### **The status of alimony in Islam**

In judiciary system of Islam, providing the requirements of family (women and children) is imposed on husband and a woman, regardless of her wealth, has no responsibility for providing the finance and managing the livelihood of a family, and her participation in financial affairs is completely due to her choice. It should be noted that granting alimony to a woman does not produce any rights for taking advantage of a woman's workforce and dominate her financially, and this is the key point of difference between alimony in judiciary system of Islam and non-Islamic systems. In non-Islamic systems, alimony is the wage for woman's work and results in man's financial dominance over woman during the marriage. Due to the

unfamiliarity of western culture with alimony concept in Islam judiciary system, the strict and hardline feministic viewpoints consider alimony as a factor for exploiting women. But Islam sees woman as a prince and determines that a man should provide her comfort in all the ways in exchange for the pleasure and gratification he receives. That is how the two mates can play their inherent and main role and enjoy comfort together.

### **The status of alimony in convention**

One of the important objectives of the convention is to fight against the gender-based roles which adapting them with various laws of different countries may produce ambiguities. For example, convention has not explicitly mentioned alimony anywhere and it is not obvious whether or not the alimony is considered as an example of gender-based roles. The answer may mention that the nature and entity of convention is to eliminate the discrimination against women and has no contrast with granting special privileges to women, such as alimony. It seems to be considered an indecent action considering the viewpoint of western counties, since they believe that alimony makes a woman's financial state dependent to her man and is a beginning to women's financial need and dependence. In fact, western countries seem to bring up the subject of women's

independence to avoid recognizing women's two fundamental and critical roles as mother and wife, which both require social education and economic support.

### **Research methodology**

The research method depends on the objective and nature of the research and its executive possibilities. Since the present research is a comparative analysis of wife's financial rights in Iran and convention on elimination of all kinds of discrimination against women, the research method is library and descriptive-analytic method.

### **Library method**

The first step for achieving research objectives is to collect data in order to find out the facts. Library method is applied in all scientific researches (Hafeznia, 2001). In order to collect data in research literature and theoretical principles, the dissertations, articles and databases will be used.

### **Research key terms:**

**Financial right:** they are the privileges which the judiciary system of any country grants to people in order for them to fulfill their corporeal needs. The aim of this kind of right is to provide relationships among people in terms of applying and using materials. This type of right is exchangeable with money, such as property right, exploitation right, etc.

### **Alimony:**

Definition: it has two meanings in Persian language: 1. the property which is granted or donated

2. The property which is spent for the expenses of wife and children, the expenses of livelihood.

### **Dowry**

Dowry is the money which woman can have a ownership on it as a result of marriage and a man binds to pay it.

## **CONCLUSION AND SUGGESTIONS**

### **CONCLUSION**

The results of this research showed that woman enjoys an independent entity in the judiciary system of Islam and all of her basic and civil rights have been considered, as there are a great deal of evidence on this in verses of Quran and the Constitution of Islamic Republic of Iran. But in western modern societies which have been influenced by feministic statements and slogans, the personality of a woman is observed completely equal to men, regardless of their physiological differences. In western humanistic view, "family" has lost its traditional importance and women are not bound to observe their motherhood or marital duties as they are stated in Islamic teachings. The convention and some western countries have pointed out the equality between men and women in financial and property rights.

This rights is an inherent and basic right of any individual and deprivation of private property is allowed only in case of providing and securing public comfort; it should also be considered that Islam has granted this right 1400 years ago, but western countries has recognized it only during the recent two centuries.

Islam's viewpoint toward women is a respectful and lofty one, and the discrepancies between two genders should not be interpreted as the result of women's inferior position. The criteria for the superiority of both genders are only virtue and Islamic rights are proportional to the assignments and duties which are imposed to the people.

The necessity of paying alimony to women is one of the advantages of Islam judiciary system and binds men to pay his wife's alimony to help her fulfill her motherhood duty and educate their children with a higher degree of comfort. Article "C" in provision 16 of the convention has foresaw the joint responsibility of men and women during their marriage.

The necessity of paying dowry to women contributes to women's self-esteem and financial independence and compensates the lower amount of her inheritance and bold money, but in convention no such items is not

observed. This point of view demonstrates the respected statues of woman.

Woman's duty for work as it is mentioned in the convention is considered necessary and woman is bound to accept a share of livelihood expenses, while in Islamic judiciary system and Law of Iran, a woman is not obliged to work and should be paid even for her work in the house and also for breastfeeding the infant. In contrast, article "B" of provision 5 has defined the motherhood role as a duty for woman, without no wage or remuneration in exchange.

In spite of recognizing property ownership for woman in Islamic judiciary system, the obligation of paying alimony is not imposed on woman. But the convention sees woman as a commercial partner which has equal rights and duties with her partner.

The results of feministic approaches in western communities demonstrate the fall of a woman's social status. The complaint of western scholars on the practical results of this humiliating viewpoint has escalated in the last two centuries. A typical western woman has transformed into the greedy man's puppet which has resulted in the lack of inherent identity which Islam considers for a woman.

Despite numerous advantages of judiciary system of Islam, the judiciary system of our

country has some defects due to several ambiguities which cause troubles for women to have their legal rights. For instance, some of the regulations relating to women have some defects and barriers which hinder women to reach the legal rights despite paying high expenses of legal procedure. Some of them preferred to neglect their legal rights and persuaded their husband to make a divorce.

### **SUGGESTIONS**

According to the aforementioned discussions, the following items are recommended for reforming the laws for women in the hope of removing the current defects in Iran legal system:

1. Since family is considered as the fundamental unit of a society and main center of human development, the authorities should do their best for consolidating this holy institute and preventing its instability.
2. Although some of western slogans sound attractive, but the cultural authorities should inform people about the outcome of realizing these slogans and theories.
3. Law of Islam ensures the life of mundane and heavenly world, especially for women. It is a very comprehensive collection and men

and women in this country should become familiar with their legal right, request for it and prevent any kind of aggression toward it. The responsibility of executive and academic authorities in enlightening people's minds is so serious and critical, so they need to prevent the implementation of defected feministic ideas by thoughtful and wisely legislation.

4. Constitution of Islamic Republic of Iran has foreseen proper and suitable provisions in its provision 21 and it is on the legal executives to approve executive regulations and reform the necessary provisions of Iran civil rights in order to protect women's rights, especially widows and women in charge of the family finance. This duty has not yet been fulfilled in an appropriate fashion.

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