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**LIMITATIONS FOR EMPLOYMENT OF MARRIED WOMEN IN IRAN'S LEGAL
SYSTEM**

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ABSTRACT

One of the most basic and clear rights of every person, men and women, is right of employment and working in the society. Before marriage, the wife has right of employment and working similar to any other person and nothing can violate the right. However, the conditions would be changed after marriage. Marriage can cause emergence of some rights and obligations for couples and in some cases, it can cause limitations of partners in some fields. Right of employment of wife is not also an exception and marriage can also affect this right of wife and can cause prevention of wife to use the right. In general, employment of married women can be restricted based on some factors including educations level, literacy, and number of children and so on. According to article 1117 of Iran Civil Code, The husband can prevent his wife from occupations or technical work which is incompatible with the family interests or the dignity of himself or his wife. In explanation of the recent article, it could be mentioned that according to article 1105 of Civil Code, in relations between husband and wife; the position of the head of the family is the exclusive right of the husband. Article 1106 of said code has also stated that the cost of maintenance of the wife (alimony) is at the charge of the husband in permanent marriages.

Keywords: Employment, Married Woman, Civil Code, Alimony

INTRODUCTION

Recently, on one hand Iran needs employment of women and their workforce can't be ignored and economy of the families would face shortage and defect without their employment and on the other hand, employment of women outside takes naturally some hours, in which the mother would be away from the family inevitably. Hence, all dimensions should be considered for purpose of meeting financial needs and welfare of the family. According to principle of independence of asset of married woman that has been also referred in article 1118 of Civil Code, employment of married woman can't negate commitment of husband for paying alimony. Based on article 18 of Family Protection Act approved in 1974 that has not been cancelled till now, husband can use this right only following confirmation of the court. The court accepts limitation of employment of the wife under two conditions including a) contradiction of employment of wife with family interests and b) contradiction of employment of wife with dignity of herself or her husband. The present study aims in presenting existential philosophy and terms of implementing article 1117 of Civil Code and probable defects in it and proposed solutions.

Existential philosophy and conditions of enforcing article 1117 of Civil Code

No verse is existed in Quran based on prevention of employment of the wife and instead there are some verses that refer to permission of employment of the wife. Nisa Surah verse 32 has stated that: "For men, is a share of what they have earned; and for women, is a share of what they have earned¹". Predication of this verse includes optional and intentional earnings of the wife too². Islam believes that the things that are related to human rights and values are not different between man and women at all. Therefore, as men are owner of what they earn, women are also owner of what they earn. The expression can prove permission of working for women same as men in addition to accept right of ownership for women. This is because; the verse has assumed legitimacy of earning and has then made idea about ownership of earning resulted from the verse. Now, the question would be raised that why in article 1117 of Civil Code employment of married women is faced some limitations? (Hadavi Tehrani, 2007, p.78). Civil Code has given

¹ "For men, is a share of what they have earned, and for women is a share of what they have earned.", Nisa verse 32

² Hashemi Seyyed Mohammad, (2012), human rights and basic freedoms, Mizan Publications, Tehran, p.548

right of heading family to the husband, through which husband can prevent his wife to be employed in a profession, which is contrary to interests of the family and couples. However, it should be noted that wife and husband are basic elements of emergence of family and continuity of existence of the phenomenon is depended on their presence. However, preference of position on the other one can cause legal effects based on priority on one hand and obedience on the other hand³. Article 117 of the Civil Code gives power and creativity to the men and limits women in regard with settlement of their legal right of employment, which can be regarded as a kind of inequality. Due to principle of independence of earning of married woman referred in article 1118 of Civil Code, employment of the wife can't negate commitment of the husband against paying alimony. According to the principle, marriage contract can create no limitation in rights of the wife on her earning and obligations of the husband against paying alimony has no relationship with amount of earning of the wife and even if wife is employed, the husband is responsible for paying her alimony. In this regard, earning of the wife as a result of working is her personal

asset and has no commitment for spending her money for family costs. Therefore, husband is head and manager of the family and relevant affairs of family legally and determining interests of the family in in charges of the husband. Hence, he has the right to prevent employment of his wife in some cases. Thus, wife can have any kind of employment that is not contrary to his obligations in her marital life; unless that husband has recognized the employment contrary to interests of his family and dignity. In view of some jurists, it is unethical action for a woman to have employment without permission of her husband, since according to articles 1103 and 1104 of Civil Code, husband and wife are bound to establish friendly relations and they must cooperate with each other for the welfare of their family and the education of their children (Imami, 1978, p.450-452). The recent idea is famous idea of Imami Jurists, who believe that consent of the husband is required while going outside (Allameh Helli, (1992), p.95; Mohaghegh Helli, (1988), p.558; Khomeini, (1988), p.305). According to the said theory, outgoing of the wife without permission of her husband can be considered as disobedience (infidelity of a wife) in any case. Some jurists have interpreted article 1105 of Civil Code due to

³ *ibid*, p.543

famous theory of jurists and have considered wide range for heading of the husband and have stated that: "in juridical terms, basically outgoing of wife for any purpose should be under permission of the husband". Therefore, if the wife has not been employed while marriage and the marriage contract has not been concluded with the term of employment, the husband can prevent his wife to have any kind of employment outside absolutely (Damad, 1993, p.316). Instead, some jurists have considered more limited range for leadership of the husband: "husband can detect his wife and her interactions for purpose of protecting his family. He can also prevent his wife from behaviors that threat their family; although the husband has not the right to prevent his wife to have relationship with her relatives or to do her religious obligations or social tasks with no good reason". Authority of the husband is not in line with proud and mastership on his wife. The aim of the legislator is preserving family interests and dignity of both parties and the authority given to the husband should be in limit of the said issues (Katuzian, 1992, p.229). It seems that freedom of the wife can be restricted only in time that it is in contrast to the right of enjoyment of the husband. Article 1105 of Civil Code that is the only

legal evidence for husband to be head of the family should be limited to the marital affairs and right of husband for limiting and controlling interactions of his wife should not be regarded an absolute right. This is because; the subject of employment of wife outside would become true through this and in-home employment activity is less in contract with right of enjoyment of the husband. Hence, it is reasonable ethically for the wife to never go out without permission of her husband; although if the wife has gone out for good reason without getting permission of her husband, she would not be sentenced for disobedience (Hedayat Nia, 2006, p.112).

After explanation of considered limitations in regard with employment of married women inserted in article 1117 of Civil Code, the question would be raised that how husband can use the legal right? The mentioned article is silent in regard with enforcement of the right; although there are two ideas in this case. Before approval of Family Protection Act in 1974, the idea was existed that men as head of family has the right to prevent their wife to have work outside without order of the court and following their own recognition and if women have objection against the restriction, they should refer to the court and present their evidences and reasons for

purpose of demanding for their right of employment. In view of some scholars from appearance of articles 1105 and 1117 of Civil Code, it has been interpreted that the husband has absolute authority (Katuzian, 1999, p.234). However, after approval of Family Protection Act (1974), the husband can use the right following confirmation of the court. According to Article 18 of the act, following confirmation of the court, husband can prevent his wife to be employed in any kind of job that is in contrast to interests of family or dignity of him and his wife. The wife can also have such request from the court. If the court finds no damage for livelihood of the family, then it would prevent the husband from the mentioned employment.” It should be also mentioned that the Family Protection Act has faced some oppositions after Revolution because of being in contrast to some articles of Civil Code; although its has not been abrogated yet. For example, in article 23 of Family Protection Act, article 1041 of Civil Code has been modified as follows: “Marriage before the age 18 for women and age 20 for men of majority is prohibited. Note -Marriage before puberty by the permission of the Guardian and on condition of taking into consideration the ward’s interest is proper.” In 1982, article

1041 was amended and came into force for 5 years in test form. The new corrigendum stated that marriage is prohibited before age (Katuzian, 2002, p.682). Hence, according to article 1117 of Civil Code, the court accepts limitation of employment of women under two conditions as follows: a) contradiction of the occupations or technical work with the family interests b) contradiction of wife’s work with the dignity of himself or his wife. According to the recent theory, a husband, who wants to use the article 1117 to prevent his wife from working, should present his claim as plaintiff and present then his request for prevention of his wife from working outside after proving that her work is against family interests and dignity of him or his wife. The wife can also present her claim as defendant and prove that the claim of her wife is baseless. Clearly, if in this case the court finds that job of the wife is not in contrast to family interests or dignity of wife or husband, the husband can’t prevent his wife from working. However, if the court states that her job is contrary to family interest and dignity of wife and husband, a copy of the order of the court would be also sent to the workplace of woman for purpose of preventing her from working. To issue the sentence, the court needs authentication of two conditions.

1- Contradiction of employment of wife with family interests

According to article 1117 of Civil Code, The husband can prevent his wife from occupations or technical work which is incompatible with the family interests or the dignity of himself or his wife. However, what is the aim by incompatible affairs with family interests? In view of some lawyers, the aim by such affairs is those affairs that can typically cause collapse of foundation of the family or defect in protecting and training children and distortion of economic status of the family (Katuzian, 2002, p.682). However, there is no evidence for recognizing the affairs in law and religion, since general ethics and specific status of each region and social credit and position of individuals in families can affect determination of interests of the family and would be also varied in different time and places. For example, family interests of an actor are different from family interests of a teacher or scientist (Katuzian, 1999, p.234). Therefore, in any specific case, one should refer to specific ethics and traditions of the society and special status of the family to find that is job of wife incompatible with family interests or not? Generally according to Civil Code, it could be mentioned that employment of wife should not cause defect in normal

process of family affairs and should not also cause defect in managing the home and training children. Article 1104 of the Civil Code has claimed in this regard as follows: "Husband and wife must cooperate with each other for the welfare of their family and the education of their children". Therefore, stabilizing and empowering base of family is common duty of couples. However, if job of the wife causes destruction of family base for some reasons, the husband can prevent her from working. According to article 1168 of Civil Code, "Maintenance of children is both the right and duty of the parents". If job of wife prevents her from performing her legal duties against children, the husband can prevent her from working. Hence, it seems that if the wife is able to run her family and maintain her children wt the time of being employed, her husband can't prevent her from working and having job.

2- Contradiction of employment of wife with dignity of her or her husband

According to article 1117 of Civil Code, The husband can prevent his wife from occupations or technical work which is incompatible with the dignity of himself or his wife. In Iran Law, no specific definition and rule is available for contradictory affairs

with the dignity (Katuzian, 1999, p.233) and the dignity would be measured based on position of individuals. For example, dignity of a man, who has been in prison for many years, is not same as dignity of a person, who has confronted with corruption and crime for many years. It should be noted in this case that, one can't consider difference between dignity of wife and husband, since after marriage a permanent and stable relationship would be created between interests of wife and husband and their dignity. Hence, the wife can't deny opposition of her husband for working outside just through the excuse that her job is just contrary to her own dignity and every one can make decision independently.

In view of some lawyers, the aim by contradiction with dignity of wife and husband is the affairs that are not expected socially from the wife and husband (Imami, 1978, p.451). However, it seems that there is no fixed rule in this regard and it is depended on specific position of wife or husband in terms of education, social position, employment base, earning rate, economic status and family lineage. For example, if a wife earns money through beggary or her workplace is not good reputed, she may be included under the mentioned condition. However, it could be generally mentioned that

if workplace and job position of the wife is not considerably lower than her husband, it seems that husband can't prevent her from working because of contradiction of her job with his dignity. It should be mentioned that due to existed defects in regard with restrictions and mutual rights of couples and also changes structure of family, Commission of Protection of Women and Children Rights, representative of Judicial Power, has suggested 5 progressive conditions for marriage of women. The conditions are presented in form of applied terms while conclusion of marriage contract. Although some of the mentioned terms are considered in the current marriage documents under the title of stipulations, in some cases the terms are not sufficient and other terms should be also added to them in the marriage contract. Some of the terms, which are not mentioned in marriage documents but are accepted by judicial courts and wife and husband can consider them in their marriage contract with the agreement of each other, are as follows: education, employment, advocacy of wife for issuing permission of going abroad and absolute advocacy of the wife for divorce. In regard with term of employment, it has been referred that the husband can prevent his wife from occupations or technical work which is

incompatible with the family interests or the dignity of himself or his wife.

In regard with article 1117 of Civil Code, various questions have been raised that here some of the most important questions are presented. The first question is that when the wife is employed before marriage and the husband has been informed of this issue and has married her and has accepted her employment after marriage, whether husband can prevent his wife from her working under such conditions? In answer to this question, it should be mentioned that in such cases, right of employment of the wife is preserved and the article has stated that if the marriage is based on employment, the wife can continue her activity and job. In general, couples may state their agreement while conclusion of marriage for employment of the wife. The said term is valid in the contract and no debate is remained. Article 1119 of Civil Code has claimed in this regard as follows: “The parties to the marriage can stipulate any condition to the marriage which is not incompatible with the nature of the contract of marriage, either as part of the marriage contract or in another binding contract: for example, it can be stipulated that if the husband marries another wife or absents himself during a certain period, or discontinues

the payment of cost of maintenance, or attempts the life of his wife or treats her so harshly that their life together becomes unbearable, the wife has the power, which she can also transfer to a third party by power of attorney to obtain a divorce herself after establishing in the court the fact that one of the foregoing alternatives has occurred and after the issue of a final judgment to that effect”. In ideas of jurists, principle of validity of stipulation and invalidity of elementary terms can be considered as main conditions for employment of wife (Kalini, 2009, p.456). However, jurists have presented different ideas in this regard. Some of the believe that in such cases the husband can't prevent his wife from working through referring article 1117 of Civil Code, since the contract has expressed the employment contract term and the contract is prior to the marriage contract and the recent contract can't cause cancellation of the prior contract (Imami, 1978, p.451). Others believe that authority of the husband is not only related to the jobs that the wife selects after marriage, but also it can encompass all jobs began before marriage and consent of husband can't decline her legal authority, since preventing wife from working is not the only right of husband, so that it can be claimed that it has been violated through

announcement of consent. Survival of such authority and power is related to affairs of public order and applying it can be regarded among obligations and responsibilities of the husband for purpose of managing family affairs (Katuzian, 1999, p.235). It seems that if the wife is employed while marriage and the man has married her knowing this or continuing employment has been mentioned clearly in the marriage contract as stipulation, the husband can't prevent her wife from working or violate the right; unless there are some exceptions as follows: firstly, family inters are changed after marriage in a manner that can necessitate lack of employment of the wife. Secondly, basic elements of dignity of the husband such as education level, social position, employment base, earning rate and economic status are changed (Feiz, 1999, p.89). Another question raised here is that if specific loss is created for the employer of wife through prevention of the husband from employment of his wife without order of the court, who is responsible for loss compensation? In fact, the government or employer considers some commitment and obligations for the woman against her wage and interests. The commitments would remain incomplete through prevention of the wife from working by her husband. This may be

followed by some losses and damages for the government or employer. It seems that if the husband prevents her wife from working without permission of the court, compensation of financial losses would be among his charges. However, in regard with preventing wife from working following the order of court, no one of wife and husband is responsible for loss compensation, since employment contract of the wife would be cancelled as a result of prevention of her husband from working. Hence, all promises and commitments of the wife as a result of employment would be null and void and the employer should obey the order of court. Some jurists believe that in this case the wife should compensate losses of the third parties, since the situation is resulted from conditions that have been created after that the wife has accepted marriage contract. Also, decision of the husband and confirmation of the court are not the Act of God and can't exempt the wife from compensation of losses resulted from lack of acting based on commitments (articles 227 and 229 of Civil Code). This is because; the barrier that has prevented the wife from completing her commitments is not an external cause, but also it has been resulted from the situation that she has found

following marriage contract (Katuzian, 1992, p.236).

CONCLUSION

Employment of women can be limited based on some factors such as education level, literacy, number of children and so on. Marriage can also prevent women from working in some cases and under some specific conditions. According to article 1117 of Civil Code of Iran, the husband can prevent his wife from occupations or technical work which is incompatible with the family interests or the dignity of himself or his wife. In explanation of the mentioned article, it could be mentioned that according to article 1105 of Civil Code, heading is one of the main responsibilities of the husband in marital life. Article 1106 has also considered alimony of the wife in charges of the husband. In addition, due to principle of Independence of Earning of Wife from Her Husband, referred in article 1118 of the Civil Code, employment of wife can't negate commitment of husband against payment of alimony. Hence, the husband is head and manager of the family according to law and religion and is responsible for determining family interests. Hence, the husband has the right to prevent his wife from working in some cases. Thus, the wife can have any kind of job that is not

contrary to her duties resulted from marriage; unless the husband has found that her job is contrary to family interests and his or his wife dignity. According to article 18 of Family Protection Act approval of 1974, the husband can use this right only following confirmation of the court. The court would also accept the limitation of wife's employment under two conditions including contradiction of her job with family interests and contradiction of the employment with her or her husband's dignity. According to the recent theory, a husband, who wants use the article 1117 of Civil Code for purpose of prevention of her wife from working, should present his claims to the court as plaintiff and after proving his claims, he should request for prevention of his wife from working. Wife can also present her claims in position of defendant and attempt to prove that statements of her husband are baseless. According to article 18 of the Family Protection Act, it seems that the wife has also the right to prevent her husband from having specific job through authentication of two conditions in the court and the court would accept her claims, if the order can't result in defect and problem in livelihood. However, defects of article 1117 of Civil Code in regard with right of wife for prevention of employment of her husband, it

could be mentioned that if the job of husband is contrary to family interests and dignity of couples, provisions of the recent article 1117 would be modified following order of the court. In this regard, the government is attempting to present a bill for purpose of handling problems of couples in regard with job of their spouses, which are contrary to their family interests or are against their dignity. Such procedure can have more compatibility with the family situation.

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