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Comparative Study of the Marital Days' Equivalent Remuneration in Civil Law and Sunni Jurisprudence

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Abstract: *One of the specific rights considered in jurisprudence and law for the women is marital days' (wedlock) fair or equivalent remuneration. The Islamic creeds' jurists have dealt with the issue of marital days' fair remuneration in many of the jurisprudential books and various chapters and laid the jurisprudential foundation of fair remuneration on the axiom of the Muslims' properties veneration. Based thereon and drawing on the jurisprudential premises, this right has been inserted in Iran's law, including in article 336 of the civil law and the law of family support, passed in 2012. However, various expertise opinions offered due to the specialists' lack of adherence to a clear-cut criterion in the determination of the fair remuneration that consequently leads to the issuance of various sentences in the courts, a comparative study of the fair remuneration in civil jurisprudence and Sunni jurisprudence is carried out for helping the removal of the barriers and challenges to its enforcement in the regulations considering the fact that fair remuneration of the marital days is originally a jurisprudential discussion because it is deemed necessary to compensate for the shortcomings of its enforcement. So, the present study performs a comparative study of the issue in the civil jurisprudence and Sunni jurisprudence based on the foresaid assumption through taking advantage of analytic-descriptive method. The present study shows that although there is no independent chapter in the jurisprudential books and resources on the fair remuneration and the wage rate of the jobs that are canonically not the duty of the women, a comprehensive perception corresponding to the society's conditions can be achieved from the civil jurisprudence and Sunni jurisprudence for attaining a proper structure so as to finally enact and enforce the related regulations.*

Keywords: *fair remuneration, jurisprudential premises, comparative study, women's rights, law.*

INTRODUCTION

As a sacred issue, marriage is emphasized in Islam with its basis being the formation of family and creation of a warm environment along with love, affection and sincerity. In fact, the relationships between husband and wife are formed based on affectionate feelings and not employer and worker relations. However, the familiarity of each of the couples with his or her duties and obligations in respect to the other assist them in achieving a favorable perfection. The couples' duties before one another have been stated in the jurisprudence and our civil rights have also mentioned its cases drawing on jurisprudence in Iran's civil laws. Of course, the

payment of the wife's wage for the tasks that have been confirmed by the Islamic jurisprudence is indicative of the idea that even the wife can demand a wage for milking the husband's child.

The issue of the wife's performance of certain duties and receiving of a certain amount of wage is amongst the important women's rights; during the past years, sporadic regulations have been approved for the safeguarding of the rights of this social class. One of the most challenging regulations is the note 6 to the single article of the law on the reformation of the divorcement regulations, approved in 1992, by the force of which a wife could receive a wage for her housework even after being divorced by the request of the husband in case it is justified that she has not violated her marital duties and also that she has not performed the housework gratuitously otherwise she loses her entitlement to the fair remuneration. The aforesaid single article was rescinded with the enactment of the law on family support in 2012 and the society was urged to take a more just way for fulfilling this right and provide a clearer image of the fair remuneration. Corresponding to article 116 of the civil law and annexing of a note thereto in 2006 by the National Exigency Council, a wife can be entitled under certain conditions to a certain amount of wage for her doing of the housework.

Fair remuneration can be somehow recognized as a sort of wage for the housework and efforts that a wife has done and made during the marital life and remuneration is considered for them although they have not been canonically her duty. Of course, this has to have been done by the order of the husband and without the wife's gratuitous intention in performing them. It is also stated in another definition that if a person takes advantage of a specific property that is not depreciated in the course of time, a rental is determined between the owner and the user for the period of time the latter has made use thereof and this amount of rental is termed fair or equivalent remuneration whether s/he has used the property by the permission of the owner or not. The above definition of the fair remuneration only points to the enjoyment of a third person's property but the subject of the present study is the husband's enjoyment of the wife's work force during marital life's days. Thus, assuming working as a sort of property, the human beings' services and works find financial value hence become exchangeable with money and enjoyment of the other person's work, as well, deserves a fair remuneration.

Defining Fair Remuneration:

Fair remuneration is amongst the expressions the meaning and concept of which is very much vivid to the jurists and jurists and, due to the same reason, it has been less frequently defined in the jurisprudential and legal books; however, there are various definitions existent for fair remuneration (Katouziyan, 2015, p.152).

Fair remuneration has general and specific definition and the payment of a fair wage to a person who has been commissioned to the performance of a task is quite common in many of the transactions like rent, bailment of capital, shared irrigation, marriage and so forth and it is capable of playing a role in the various kinds of transactions. In its specific sense, fair remuneration means payment of an equivalent wage for the wife's doing of the housework and she can demand its payment at any time of the marriage days. Fair remuneration is opposite to the specified value that is paid usually by the people for the performing of a task to a worker but its amount is not specified and determined. In fact, a wage is estimated and specified for a task similar to the intended action. For example, if a person is hired for painting a building and no wage is specified, the action is calculated based on the common practices after the termination of the work by the painter or in an independent manner based on the fair remuneration of the hirer's enjoyment of the task done and the same amount is taken as the equivalent wage.

Conceptualization of Mot'eh Al-Talāq:

The Arabic word "Mot'eh" is a noun derived of "Tamatto'e" meaning "enjoyment". This meaning exists in all sort of "Mot'eh", including "Mot'eh Nekah" [benefits of marriage] and "Mot'eh Talāq" [benefits of divorcement]. Meanwhile realizing "Mot'eh" and "Esta'atat" as synonymous words and pointing to the kinds of "Mot'eh" such as divorcement's benefits, Jawhari states that "Mot'eh" has been derived of "Esta'atat". Raqeb, as well, has

stated that everything that is deemed useful in a way or another is a “Mot’eh” [enjoyment] and “Matā’a” [commodity] (Esfahani, 1992, p.757).

The words “Mot’eh” [enjoyment] and “Matā’a” [commodity] mean the thing that can be used of its benefits but for a temporary time and a little amount. This meaning can be traced in all sorts of Mot’eh Al-Talāq. By Mot’eh Al-Talāq, the enjoyment of a wife of certain benefits is intended that are exchanged for the divorcement and separation between the husband and the wife and it might include any property or item that is given to the divorced wife (Tha’alabi, 1994, p.1310).

Legal Definition of Fair Remuneration [Ojrat Al-Methl]:

The term Ojrat Al-Methl [equivalent wage] is comprised of two words “Ojrat” [wage] and “Methl” [equivalent] and it means the amount of money paid for an action and in comparison to the similar specimens. For instance, when it is stated that the equivalent wage for painting a building is this or that much, the remuneration is intended that a person has to pay for the painting of a building similar to the existing one.

It has been defined by jurists in the following way:

- Equivalent wage is the price not specified between the parties who would have to refer to the experts for its determination.
- The money payable in exchange for taking advantage of the benefits of a property for which no contract has been concluded is called equivalent wage.
- The real equivalent price of the benefits that is determined in the market through considering the examples of a rented property is called equivalent wage (Katouziyan, 2015, p.159).

Jurisprudential Background of Wage:

The issue of wage for women for the services that are not amongst their duties like milking of a child and acquiring wage from the parents and/or properties of the child is amongst the subjects posited in part of the narrations and jurisprudential resources but no trace of it can be found in jurisprudence in the form of a single jurisprudential topic with the jurists’ sole concentration on and dealing with it. Although some services like housecleaning and taking care of the house affairs have been explicitly denied as the women’s duties, there is contrarily nothing found about the determination of wage for them in the housework they do but not as their canonical duty.

The subject of the payment of marital days’ equivalent wage includes the remuneration for a wife’s milking of a husband’s child and/or enjoyment of her based on the jurisprudential basics. The present study tries comparing the marital days’ equivalent remuneration in law and jurisprudence so as to elucidate the stance of marital days’ remuneration in jurisprudence.

Jurisprudential Background of Mot’eh [Enjoyment]:

Amongst the Āyāt in the holy Quran, Āya 236 of SŪRAH BAQARA realizes Mot’eh as a specific privilege to the divorced women who have not been subjected to sexual intercourse and no bride price has been specified for them. Āya 49 of SŪRAH AHZAB orders the believers that “if you divorce them before sleeping with them, grant a good gift to them”.

In Āya 241 of SŪRAH BAQARA, as well, an absolute order is issued for the payment of a gift to all of the divorced women. Mot’eh is of different kinds like divorcement gift and marriage gift (marriage portion) and it is commonly a property that a husband gives to his wife after divorcing her based on his affordability so that she can take advantage of it during the divorcement respite. In other words, Mot’eh is applicable to the case of a woman who has married a man without specifying an amount of bride price during the marriage contract’s conclusion and she has been divorced before copulation in which case she will be granted a gift in proportion to the financial status of the husband (Najafi, 1984, p.58; Tabarsi, 1986, p.596).

However, considering “Mot’eh Al-Talāq” [divorcement gift] as “bride price” and enumerating it amongst the different kinds of bride price does not seem to be correct because it has not been interpreted in the Shiites and Sunnis’ jurisprudential resources as the marriage portion and it has been only pointed out that a woman for

the marriage to whom no bride price has been specified at the time of marriage contract's conclusion is called "Mofavvazah Al-Bez'e" and such a woman deserves the reception of a gift at the divorcement time if she is not mated; so Mot'eh has to be considered as including marriage portion and not a kind thereof. It is evident that a thing's general title cannot be a kind of it. In this regard, Shahid-e-Avval has the following words: "permanent marriage can take place without mentioning the bride price amount in which case the wife deserves the payment of a marriage portion in case she has been subjected to copulation and she deserves a gift if she is not slept with (Tabataba'ei, 1985, p.302).

Mot'eh from the Perspective of Sunni Jurisprudents:

Al-Hanafiyeh: "*Fa Al-Talāq Al-Zari Tajeb Behi Al-Mot'eh*" meaning "a gift has to be paid when divorcing a wife for the marriage to whom no bride price has been specified and she has not been subjected to sexual intercourse and it does not make any difference if the marriage portion is determined after marriage contract or not or even if the determination of a marriage portion is found essentially invalid. Marriage gift or Mot'eh is of two types: necessary and recommended with the former including the case wherein no marriage portion is defined and no sexual intercourse has taken place and the latter is applied to the rest of the cases (Jaziri, 1969, p.131).

Al-Shafe'ei: "*Fa Ezā Tallaqta Al-Mofavvazah Qabla Al-Dokhūl Wa Qabla An Yafrez Lahā Mehr Wajabat Lahā Al-Mot'eh*" meaning "if a woman for whom no marriage portion has been defined is divorced before copulation, she should be granted Mot'eh that is a gift or property the husband has to necessarily pay to the wife" (Jaziri, 1969, p.131). But, there is no Mot'eh Right for the women in three cases:

- The woman for whom bride price is specified after marriage contract's endorsement.
- Divorcement is demanded by the wife or agreed by both of them and/or based on the violation of both of them.
- Divorcement is based on the wife's death (Jaziri, 1969, p.131).

Al-Hanābaleh: "*Wa Kamā Anna Al-Mot'eh Tajeb Li Al-Mofavvazeh Al-Lati Lam Yaosemma Lahā Sedāq wa Tallaqat Qabl Al-Vati*" meaning "a gift has to be necessarily given to a divorced wife for whom no bride price has been specified and has not been subjected to copulation".

Al-Mālekiyyeh: "*Fa En Tallaqta Qabla Al-Vata'a Wa Qabla Al-Dokhūl Aw Māta Ahadhomā*" (Jaziri, 1969, p.131)

In opposition to the well-known verdict, a few of the interpreters and jurisprudents know the payment of a gift necessary in all sorts of voluntary separation demanded and performed by the husband. In other words, they realize this gift and enjoyment thereof as an issue separate from marriage portion and bride price and equivalent remuneration and know it the duty of the husband in all forms of divorcement. In a Hadith from Imam Amir Al-Mo'menin Ali Ibn Abi Taleb (PBUH), it is stated that "every believer woman has the right to receive divorcement gift when being divorced and it does not matter if she has been a bondswoman or a free woman" (Maibodi, 1982, p.649).

Amongst the contemporary Sunni interpreters, Dr. Vahbeh Zohaili has the following idea in an interpretation of Āya 241 of SŪRAH BAQARA: "I think Shāfe'eyeh's words are more superior because this Āya proves gift in every divorcement whether copulation has taken place or not. The God has obliged the divorcement gift in case of no copulation and the aforesaid Āya generalizes the necessary cases. Ibn Jarir quotes Ibn Zaid that when this Āya was revealed, a man said if I wanted to perform an act of generosity I would grant a gift otherwise no; and, the second Āya was revealed" (Zohaili, 1991, p.108).

Ibn Hazm, a Sunni jurisprudent, believes in Kitab Al-Mohalli in the generality of necessity and reasons that "divorcement gift [Mot'eh] is necessary in all of its forms and in the entire kinds of divorcement and even in divorce on the instance of wife and the ruler should oblige the husband to its payment. Yes, the payment of divorcement gift is not necessary in un-divorced separation. The husband is obliged to pay the gift to the wife and her inheritors and for an amount in proportion to her financial affordability; our proof to this claim is the

Quranic Āyāt. If it is said that the Āya has become obliterated, we would answer that the second Āya has no content contradictory to the first one so that it can be considered annulled and both of them can be used as the basis of justifications. It is stated by some that a gift is necessary where no bride price has been specified for the wife and no copulation has also taken place but, in our mind, there is no proof for this verdict” (Ibn Hazm, 1984, p.245).

Substantive Conditions of Equivalent Remuneration:

Equivalent remuneration is amongst the very specific rights considered in canon and law for the women. Women have special duties in the marital life that are specified by the law and canon. These duties include general and specific obedience. Corresponding to this law, couples are to perform certain duties and responsibilities in respect to one another as soon as they get married. General obedience of a wife means the duty that is placed in general on the shoulder of a wife and it is canonically and legally supported; as an example, a woman cannot canonically go out of the house without her husband’s permission. Continuation of education and working outside the house by a woman should also take place with the husband’s permission. However, at present, many of the women write down these rights in their marriage contract. The specific obedience, as well, pertains to marital duties but a wife performing duties other than these can demand the payment of reward provided that she has had no intention for the gratuitous performance of them (Shahidi, 2009, p.54).

Jurisprudential Conditions of Equivalent Remuneration:

Imamiyyeh and Sunni Jurisprudents agree that the divorcement is the right of the husband and base their ideas on two proofs: first of all, as it is ordered in a prophetic hadith (“Al-Talāq Bi Yad Man Akhaza Bi Al-Sāq” meaning “divorcement is in the hands of the person who endorses the marriage contract, i.e. the husband”). Secondly, an order by the Eminent God has been issued in various Āyāt that divorcement is the men’s right, including “*Yā Ayyoha Al-Nabi Ezā Tallaqtom Al-Nisā’a Fa Tallaqūhonna Li Eddatehenna*” that explicitly grants the divorcement right to the husband; it can be stated in a justification of this verdict that the sacred canonical ruler rules that the divorcement can be enforced by the perfect performance of the wife’s right such as bride price, alimony, equivalent remuneration and that the divorcement cannot be enforced by a husband in an instantaneous manner rather it can take effect after the expiration of a specified period. If a wife is unjustly and irrationally divorced by a husband, the sacred canon of Islam has enacted verdicts and issued orders stipulating rights for the divorced women and duties for the men. One of the financial-supportive rights of the divorced women who are divorced by the want and will of the husband is equivalent remuneration (Mohaqqeq Damad, 2011, p.83). There is no independent discussion regarding the wage payable to a woman for the housework she has done in the husband’s house and there are similarities corresponding to the subjects inserted in the transaction section that can be applied as proof. In every jurisprudential subject, the payment of equivalent remuneration follows a general condition that is the very veneration of the Muslims’ rights and payment of the wage to a worker. The women’s equivalent remunerations for housework are very much similar to the wage paid to the individuals hired for doing a certain task. In the discussions about the individuals’ employment with the quality of an employer’s intention for the performance of a task and also with the interference of the gratuitous or non-gratuitous performance of the action in regard of the wage payment, it can be pointed out that the criteria for the determination of a worker’s entitlement to the acquisition of wage can be used for extracting the remuneration payable to a wife for her work at home (Mohaqqeq Damad, 2011, p.83).

Equivalent Remuneration of the Marital Days in the Regulations:

One of the premises that the jurists have put forth for the note six to the single article on the marital days’ equivalent remuneration is substantiated on the issue of enjoyment as mentioned in article 336 of civil law wherein it is stipulated that when a person performs a task according to an order by another person and there is commonly paid an amount of wage for it or when that person is found habitually doing such a task, the worker deserves the wage for his or her performance unless it is made clear that s/he has performed it

gratuitously. In fact, assuming the common value of the performance as well as based on the order of the employer and the worker's habitual readiness for the action, the legislator holds that this person has to be considered as a hireling and, in fact, a contract of employment has been concluded according to the evidence and indication without it being written down and it is generally presumed in such cases that it is not gratuitous so the person in whose favor an action has been carried out is supposed to pay the worker's wage unless it is made clear that s/he has performed the task gratuitously (Katouziyan, 1990, p.510).

Equivalent Remuneration in the Regulations: after divorcement and in case the wife demands the wage for the performance of the tasks that have not been canonically her duty, the court preliminary tries supplying her with what she has demanded through mutual agreement of the couples and, if it is found impossible, the conditions made in the course of or extra to the marriage contract regarding the financial matters will be used as the base of action otherwise, when the divorcement is not demanded by the wife and when the divorcement demand stems not from the wife's breach of her marital duties or her misbehavior and immorality, the following measures are taken:

- A) If the wife has performed the tasks that have not canonically been her duty by the order of the husband and without any gratuitous intention and this is justified in the court, the equivalent remuneration of the performed tasks will be calculated and its payment will be ordered.
- B) In cases other than the abovementioned one, considering the years of common life and the type of the tasks the wife has performed at the husband's house as well as the financial status of the husband, the court sets a sum of money in the form of a gift (Nahleh) to be paid to the wife (Katouziyan, 1997, p.82).

The equivalent remuneration of the marital days has been conditioned to several constraints by the legislator: Seminally, the wife has to demand the payment of the wage for the performance of the tasks she has not been canonically obliged to; it means that the subject of the marital days' equivalent remuneration is not spontaneously posited and this is, of course, corresponding to a premise in the law and the supervisory role of the law in regard of the rights. But, according to the fact that the philosophy of this single article and, especially, the note six thereto has essentially been paying a greater deal of attention to the women's rights and, in fact, the creation of a supportive law, it can be stated that it has distanced away from the goal intended by the legislator (Safa'ei, 2013, p.114).

The above request can be tried without this legal article and in consideration of the other related issues and a sentence can be eventually issued. Thus, it is better if the courts personally take measures in line with the clarification of the status of the equivalent remuneration.

The next issue is the courts' actions for establishing peace and reconciliation between the wife and husband regarding the equivalent remuneration and, in case it is requested by the wife and the parties reach an agreement about it, the courts should avoid entering the dispute.

But, if the couples reach no agreement about the equivalent remuneration, the court enters the substantive discussion about the demanded issue and investigates the existence of the in-contract conditions of marriage regarding wage and, in case there are conditions, they would be the bases of action. As a specimen, if it is set as a condition during the marriage contract's conclusion that the wife has to do the housework gratuitously and/or if it is set as a condition that the wife should be paid for the tasks she does at home and/or if the wife essentially denies the acceptance of all the house affairs, the actions will be taken in accordance to the contents agreed in the marriage contract or in addition to them and these form the basis of sentence issuance in the court (Katouziyan, 2008a, ap.a247).

Common Law and Marital Days' Equivalent Remuneration from the Perspective of the Jurisprudents:

Literally, "Orf" [customs] means the things commonly practiced and it commonly refers to the habits of a group of people in their speaking or deeds. Dr. Katouziyan defines it in the following words: it is a rule that has gradually and spontaneously become customary amongst a group or all of the people as a binding axiom.

So, two elements can be considered for mores or customs:

Material element: it includes the habits that have been conventionally set between the general public and used by them in certain events.

Psychological element: it includes the individuals' belief in its indispensability. So, there may be many habits customary amongst the people but being found not indispensable by many of the individuals like many of the courtesies of socialization and or ceremonies so not all the prevalent customs can be considered as social conventions and mores. There is an essential discrepancy between the Sunni and Imamiyyeh jurisprudents regarding the premises of the mores. Some of the Sunnis reason the justificatory nature of mores based on the honorable Āya "*Khoz Al-Afv wa A'amor Bi Al-Ma'arūf wa A'arez An Al-Jāhelīn*" (A'ARĀF: 199).

Although mores is interpreted in the honorable Āya and in the jurisprudential and interpretive resources as any sort of utterance or deed and canonical recommendations and prohibitions, it is claimed that the honorable Āya is an evidence and confirmation to the commonly practiced conventions. In Imamiyyeh jurisprudence, mores or intellectuals' way of conduct is the proof to a canonical verdict when it is endorsed through one of the certain methods in the science of principles and agreed by the canonical ruler. Hence, the intellectuals' way of conduct refers to the tradition and it is discussable when it becomes the minor term in the tradition whereas it is independently considered as a proof without being in need of endorsement the same way that tradition is envisioned as a proof from the perspective of the general jurisprudence. Mores has been used in the civil law of many of the countries; for example, according to the civil law, the article 224 of the contracts is interpreted based on mores-based perceptions and/or mores is considered as the parties' will. Article 225 of the civil law states that mores is the human beings' volition and article 365 of the civil law has been dedicated to the determination of alimony based on customary mores. Thus, following the lead of Imamiyyeh jurisprudence, civil law does not find mores as an independent proof and its use is limited to cases applicable in jurisprudence (Hedayatniya, 2006, p.80).

Marital Days' Equivalent Remuneration in Civil Law:

According to the position of mores in the jurisprudence and law, mores is often used for the determination and recognition of the subject of verdict not that it can create a law and verdict; the position of mores will be investigated in regard of marital days' equivalent remuneration.

The in-contract conditions and their relationship with mores: one of the issues proposed in note six to the aforementioned single article is the in-contract conditions. Now, the question is raised that can mores be accepted as an in-contract condition? In other words, considering the society's customs and the intellectuals' ways of conduct and/or mores-related concepts about the women's statuses in the families that typically consider women as the internal manager of the house and not a hireling and agent, can such a perception of the mores about the women's status be accepted as an in-contract condition and used for the resolution of the disputes over the marital days' equivalent remuneration?

It is explicitly stated in article 225 of the civil law that "a mores item has to be so commonly practiced that a contract can include it without explicit mentioning of it. So, the mores-based in-contract condition is in fact an explicit condition of the contract whereas the contradiction that seems to be between note six to the single article and the article 225 of the civil law is that if the perspective of mores is accepted about the women's position and status and it is considered as an in-contract condition, the turn would not come for the proposing of the marital days' equivalent remuneration and this mores-based in-contract condition (the responsibility of a woman in the family) contradicts the determination of equivalent remuneration because a wife is obliged to do the housework based on the marriage contract hence she cannot find oneself rightful and claim for a wage (Katouziyan, 2004, p.132).

It can be answered in an answer to this problem that mores is applied for the better recognition of the subject and it is indeed in a vertical position to the canon and the law and not alongside them and the robust legal principles, including the negation of the unjust possession and/or the non-gratuitous performance of a task or the veneration of the financial properties and the ownership and life of the believers, are all implying the

reverence of the individuals' properties and interests. So, an existing mores cannot specify the legal principles and be superior in practice if it is accepted that the transversal conditions are intended by in-contract conditions that cannot be the criterion of actions.

Conditions of Entitlement to Equivalent Remuneration:

Based on the note six to the law on the reformation of the divorcement regulations, the entitlement condition of the equivalent remuneration is that the tasks performed by the wife are found not amongst her daily duties and obligations meaning that wage can be paid for the set of the housework to which the wife is not canonically obliged. As for the tasks that a wife is canonically obliged to do and the tasks that are beyond her canonical obligations, the law has adopted a silent position. Here, in order to clarify the issue, reference is made to the jurisprudential resources. To do so, the subject is investigated in four parts: 1) performance of the internal affairs of the house; 2) milking (fostering); 3) taking care of the children (custodianship); and, 4) children's upbringing and rearing.

It has to be noted that the equivalent remuneration is in a vertical position to the financial in-contract conditions regarding the wife's tasks at home as well as in a vertical position to the specified wage meaning that if a wife has an in-contract condition, there would come no turn for the equivalent remuneration. Additionally, the wife should not be found having a gratuitous intention in her performing of the housework because if she has seminally intended to gratuitously do the housework, she cannot receive a specified wage following which the turn comes to such a subject as Nahleh (gift) that will be discussed later on. The divorcement request should have not been made by the wife and the husband should ask for divorcement. Of course, if the divorcement request is made by the husband due to the wife's violation of her marital duties or misbehaviors and immorality, she cannot be entitled to equivalent remuneration (Safa'ei, 2016, p.74).

Conditions of Demanding Equivalent Remuneration:

If a woman performs her husband's tasks under the abovementioned conditions, she deserves equivalent remuneration. In this state, demanding the equivalent remuneration is suspended over the actualization of the following conditions:

Existence of no financial condition: if a condition is set in or outside the contract regarding the financial affairs during the marriage contract's conclusion, it would be used as the basis of action; apparently, the very asset halving condition is meant here that is the first condition amongst the twelve conditions inserted in the marriage deeds.

Divorcement not requested by the wife: if the wife requests the divorcement, this action bars the demand for the equivalent remuneration. The divorcement request by the wife might be made for hardship and difficulty (article 1130 of the civil law), abhorrence of the husband and consensual divorcement (article 1146 of the civil law), the husband's absence (article 1029 of civil law) and vicarious divorcement (article 1119 of civil law). The legal expression stated in the note applies to and includes all of the abovementioned cases (Ibid).

The wife's non-violation of the spousal duties: based on this condition, the wife's misbehavior and default in performing the marital duties dismisses her entitlement to alimony and, at the same time, deprives her of the right to demand equivalent remuneration. Of course, this is not consistent with the legal and jurisprudential regulations and it is not clear why the wife cannot enjoy her well-justified rights in the aforementioned cases and how these conditions are related to the wife's demand of her financial rights. This is similar to stating that if a woman applies for divorcement, she cannot demand her past time's alimony. One might claim that these conditions have been enacted for preventing the baseless divorcements and lowering the divorce statistics; however, it should be noted that the temporal span of this law is the divorcement time. Additionally, a woman does not seem to be willing to shatter her familial center in exchange for a trivial amount of the corporeal materials. In the meanwhile, it is not fair for a wife getting divorced for her husband hard and difficult life to be deprived of an equivalent remuneration.

It can be comprehended from the appearance of the note six that the time for demanding the equivalent remuneration is after divorcement. The expression after divorcement in the very beginning of the above law

confirms this same conception. Furthermore, it is difficult for a wife to receive her financial rights from her husband after divorcement. Such a perception is in conflict with the note 3 of the same law because it is explicitly stated in the aforementioned note that the enforcement of divorcement and its registration in the office is pendent over the repayment of the wife's canonical and legal rights (including bride price, alimony, dowry and so forth) in cash. The expression "and so forth" in the note serves the function that it should not be imagined that the financial rights are only bride price, alimony and dowry. Therefore, the status of the equivalent remuneration or gift has to be clarified before divorcement. The ambiguity in this issue caused the proposition of an inquiry to the National Exigency Council. The council replied in the following words:

Single article: the phrase "after divorcement" in the beginning of the note six to the law on the amendment of the regulations related to divorcement, passed at 11/28/1992 by the National Exigency Council, means after verification of the impossibility of reconciliation by the courts (the women-specific rules and regulations, 2000, p.61). Thus, the temporal span of enforcing the note six is after the impossibility of the couples' reconciliation was verified. So, the wife cannot demand equivalent remuneration during her marital life. Some believe that when a wife performs an action by the demand of the husband in a non-gratuitous manner, she deserves equivalent remuneration and the husband is indebted since the wife's entitlement time till his fulfillment. Based thereupon, the wife can ask for equivalent remuneration during marital life after finishing every task. She also can ask the payment of equivalent remuneration like the other of her financial rights (alimony, bride price and so forth) at the divorcement time. One can also claim in case of the marriage relationship's dissolution by the death of the husband that the wife can request the deceased person's inheritors to pay the equivalent remuneration amongst the rights and debts that have to be shouldered by the dead person's heirs and heiresses as stated in the article 869 of the civil law that "it is amongst the rights and debts that have to be shouldered by a dead person's inheritors and fulfilled before their taking a share of the hereditament". (Ibid)

Women Deserving Equivalent Remuneration:

Apart from this topic that whether equivalent remuneration and its belonging to the wife with this constraint that she has to be granted a wage is firstly fitting the wife's prestige and position or not and, secondly, does it encourage the women to ask for remuneration from their husbands or not, the wife's right for receiving equivalent wage for the marital days is substantiated on two legal articles.

- 1) Article 336 of civil law that stipulates that should a person act based on an order by another person for accomplishing a task for which a wage has been commonly specified and/or that person is habitually ready for doing the action, s/he deserves receiving a wage unless it becomes clear that she has intended gratuitous performance of the task.
- 2) Paragraph A of the note six to the single article of the law on the reformation of the divorcement regulations approved on 19th of November, 1992, by the National Exigency Council states that "if the wife performs certain tasks that are not canonically her duty by the order of her husband and with no gratuitous intention and this is proved to the court, the equivalent remuneration will be calculated and the court sentences the husband to payment.

So, the wife can demand the marital days' equivalent remuneration from the husband based on the abovementioned articles and in case of being qualified for the following conditions.

Women Entitled to Mot'eh [Gift] in the Sunni Jurisprudence:

The jurisprudential Sunni creeds have discrepancies about the women deserving and entitled to divorcement gift because some of them, like Imamiyyeh Jurisprudents, realize gift only compulsory in case that the wife is divorced before copulation and bride price specification and recommend it in other cases. Some of them know granting of a gift to any divorced woman as a recommended action even if she is slept with but, in regard of the divorced woman with whom no sexual intercourse has taken place and no bride price has been specified, they do not find divorcement gift necessary and only suffice to the payment of the same specified amount of

bride price. All of the jurisprudential Sunni creeds have reached a consensus about the entitlement of a non-mated wife for whom no bride price has been specified to divorcement gift (Ibn Qodameh, 1968, p.402).

Non-Gratuitous Intention:

One of the other conditions of entitlement to wage is the condition holding that the wife should have performed certain tasks with no gratuitous intention. This constraint has been mentioned in article 336 of the civil law and the law on the reformation of the regulations related to divorcement. The other point that has to be investigated is that what is the superior principle in the non-gratuitous intention? It can be discerned based on the civil law that the principle is non-gratuitous intention in a dispute over the gratuitousness or otherwise of a woman's performance of certain tasks in her husband's house and this principle is in compliance with the negation principle in canon. The recent part of article 336 of the civil law states that: "a person deserves a wage for his or her work unless it is made clear that s/he has performed it gratuitously. The gratuitous intention can be well perceived from this expression. There is a characteristic in the discussion on the housework' equivalent remuneration that makes the enforcement of the principle "non-gratuitous intention" face two conflicts as explicated below:

The conflict between the non-gratuitous intention and the appearance of gratuity: family is laid on the foundation of cooperation, forgiveness and love. In case of overlooking the exceptions, the apparent and normal thing would be the idea that the wife makes sacrifices for her husband because she likes him and such an appearance cannot be dismissed unless there is evidence indicating the otherwise (Hedayatniya, 2006, p.80). The question that should be answered is that which one supersedes in a conflict of the principle with the appearance? It is stated in the definition of the practical principle that it is applicable to a case for which there is no proof and the obliged person refers to it so as to get rid of amazement and wandering. This is while the scientists of principle find the appearance as being suspicious on the surface and mention it amongst the reasons not proofs. Resultantly, as believed by the scholars of the science of principles, the appearance is superior to the principle (Sadr, 2010, p.215).

Even if the appearance's precedence to the principle is not accepted herein, the discussion about the wife's services during the marriage life would encounter another problem and that is the mores-based in-contract condition in such a way that the wife's gratuitous working in marital life is viewed as an in-contract condition in marriage (Hedayatniya, 2006, p.82).

In the civil law, as well, according to article 225, the customariness of an action in the mores and customs in such a way that a contract is envisaged to include it even if it is not mentioned therein has been explicitly stated. This discussion made the author inquire the issue from some contemporary jurists. The inquiries are reflective of the idea that the jurists who have suspended the wife's equivalent remuneration on certain conditions believe in her gratuitous performance of the housework hence finding no aspect for its legitimacy (Hedayatniya, 2006, p.82).

The Method of Calculating and Demanding Equivalent Remuneration:

No man can divorce his wife until he pays all her rights and the longer the length of the common life, the higher the amount of these rights and it is due to the same reason that some of the men who intend to divorce their wives for no logical reason refrain from doing so. One of the specific rights given by the canon and law to the women is equivalent remuneration and if a woman performs certain tasks during her common life in the husband's house to which she is not canonically obliged, she deserves receiving an equivalent remuneration. In general, the equivalent remuneration is allocated to the tasks done by a wife in her husband's house without being obliged to.

It is assumed in the familial relations that the women is not supposed to receive wage from her husband for the tasks she does in his house but the legislator's proposition of the equivalent remuneration in the legal discussions aims at the elucidation of the idea that the wife is not obliged to the housework and she can receive and equivalent remuneration for her performance of any action in the house; in other words, an equivalent remuneration has to be paid to the wife in case she demands so.

The law on the reformation of the divorce regulations, passed in 1992, incorporates seven notes the sixth of which deals with the wife's demand for an equivalent remuneration after being divorced. It is stated in the note that "when an equivalent remuneration is demanded for the tasks that are not canonically a wife's duty, the court seminally tries supplying her want through mutual agreement between the husband and the wife and, in case of the impossibility of agreement, if conditions are found having been set in or outside the contract regarding the financial matters, they would form the basis of action otherwise, if the divorce is not demanded by the wife and if it is also not due to the wife's violation of her spousal duties or her misbehavior and immorality, the following measures will be taken: A) if the wife is found having performed the tasks that have not been canonically her duty by the order of the husband with no gratuitous intention and it is proved to the court, the equivalent remuneration will be calculated by the court according to the years of common life and the type of the tasks and its payment will be sentenced; B) in cases other than the one mentioned above for the wife's performing of certain jobs in her husband's house, the court specifies an amount of money in the form of a gift (Nahleh) according to the husband's financial affordability.

Based on this note, if the woman performs certain tasks and demands an equivalent remuneration and proves that she has not done them gratuitously, the court calculates an equivalent remuneration for the housework and sentences the husband to its payment. In this note, the difficult burden of proving the non-gratuitous performance of the action hence the equivalent remuneration is placed on the woman's shoulder. This is while it has to be asked that no woman sets it as a condition in the course of her marriage that she is going to perform these tasks gratuitously or non-gratuitously? In fact, at the time of the enforcement of the note six to the law on the reformation of the divorce's regulations, the women's rights were not practically fulfilled.

The explicit text of the law on support of the family, passed in 1992, explicitly nullified the note six to the law on the reformation of the divorce regulations. It is stated in the article 29 of the law on family support, passed in 2012, that the court determines in its sentence the statuses of the dowry, bride money and alimony of the wife and children and the gestated embryo according to the in-contract conditions and contents of the marriage deed and specifies the marital days' equivalent remuneration corresponding to the note to the article 336 of the civil law and makes appropriate decisions regarding the quality of custodianship and taking care of the children and method of paying the costs of custodianship and taking care of the children. In the article 29 of the law on the family support, passed in 2012, the legislator has emphasized that marital days' equivalent remuneration is one of the family lawsuits' items and, based on the social norms, no married woman is willing to propose that she has, for instance, repeatedly performed cooking during a week or performed certain other tasks so as to be able to receive an equivalent remuneration. It has been underlined that the judges should take the husband's financial power into account when specifying the equivalent remuneration; however, it is natural that the discussions about each of the women's rights would be a unidimensional approach to such matters unless a balance is made between the ethical issues and the women's rights. The plea for requiring a husband to pay the marital days' equivalent remuneration is a lawsuit presented to family court; in this case, as well, the claimant should justify him or herself. Witnesses are also amongst the strong reasons of a claim's justification in such types of lawsuits. The judge's knowledge is another proof to the justification of such claims. To determine the sum payable for the equivalent remuneration, the case is referred to an expert.

Demanding Marital Days' Equivalent Remuneration from the Inheritors:

In 2001, the representatives of the Islamic Consultative Assembly, prepared and presented a note to the article 948 of the civil law that contained the following cases: "the wife can demand the payment of the marital days' equivalent remuneration from the hereditament left by a deceased person through it being confirmed by an specialist and in adherence to the paragraph A of the note six to the law on the reformation of divorce regulations. The bill was amended in the judicial and legal commission of the Assembly as explained in the following words: "the wife can demand the payment of marital days' equivalent remuneration for the tasks she has not been canonically obliged to do from the hereditament left by a deceased person". This

appended note was approved and sent to the Guardians Council to be adjusted to the canon and the constitution and it found it contradictory to the canonical regulations by stating that “the note to the single article does not include the cases that the wife performs actions by the order of her husband and with no gratuitous intention while the husband’s order explicitly is indicative of the gratuitousness or the mores commonly considers them gratuitous”. Based on the Islamic Consultative Assembly’s insistence, the issue was posited in National Exigency Council that subsequently decided to append a note to article 336 of the civil law in lieu to the article 948 with the following content:

“If the wife performs tasks, by the order of the husband and with no gratuitous intention, that have not been canonically her duty and there are equivalent remunerations commonly specified for them and it is justified in a court, the equivalent remuneration is calculated and the court sentences its payment”.

Since the wife’s entitlement to marital days’ equivalent remuneration is pendant over the occurrence of divorcement and, on the other hand, equivalent remuneration is an exceptional case limited to the well-justified texts, generalization of its being demandable by a wife in case of the husband’s death is against the law and the legal regulations. Additionally, the Guardians Council, as the formal and legal authority that adjusts the enactments by the Islamic Consultative Assembly, to the canon, found its bill indicating the applicability of equivalent remuneration in cases of the husband’s death contradictory to the canon. In addition, since the National Exigency Council has not firstly pointed to the death of the husband and his hereditament and, secondly, appended a note, instead of the article 948 that is about the hereditaments left from a wife or a husband, to article 336 of the civil law that is about enjoyment, it can be understood that the legislator intends the applicability of equivalent remuneration only to the cases wherein the husband is alive. Moreover, in the justification stage, the husband’s presence in court is necessary for investigating the wife’s proper sociability, no gratuitous intention, the issuance of the order by the husband and so on which would be impossible with the husband’s death. The above deductions are not devoid of fault because the proposition of such a subject as equivalent remuneration is a legal matter that needs precision in relation to the enjoyment thereof. That is because the wife and husband’s hereditament has nothing to do with the debt placed on the shoulder of the husband due to the wife’s performing of certain housework in his house and equivalent remuneration is a debt that the wife can demand anytime she wants in adherence to the related conditions. Furthermore, the thing that has been pointed out as the impossibility of investigating the conditions of the wife’s demanding of the equivalent remuneration in case of the husband’s death is indicative of its being justifiable in the court but the questionable assumption is still in its justification stage (the mere applicability or non-applicability of equivalent remuneration’s possession by the wife disregarding the possibility or impossibility of its justification in the court). However, there are other ways for verifying the reality in case of the husband’s death. Additionally, if the wife deserves the payment of an equivalent remuneration during the husband’s life, prohibiting her from that after the husband’s death would be against the law. It can be further explained that although it is pointed out in the law on the reformation of the divorcement regulations that the occurrence of divorcement is the prerequisite to the entitlement to the equivalent remuneration, the note appended to article 336 of the civil law makes no reference to divorcement and its significations convey that the equivalent remuneration is also applicable in case of the death of the husband (Hedayatniya, 2016, p.52).

Investigating the Relationship between the Condition of Properties’ Halving and Equivalent Remuneration:

This condition has been printed by the marriage registration offices in marriage deeds and the general notary public office obliged the marriage office head based on the Supreme Judicial Council’s enactment and instructions no.1/34823, passed in 1982, and no.1/31824, passed in 1983, to print two conditions in the marriage deeds and the latter has to also declare these two conditions to the marriage parties who will endorse the marriage deed after showing their agreements to them. The first condition is the halving of the assets as stated in the following words: “it was agreed within the marriage contract that when the divorcement takes place not by the request of the wife or not due to her violation of her spousal duties or misbehaviors or immorality as recognized by the court, the husband is obliged to transfer half of the assets he

has collected during the marital days or an equivalent sum of it to the wife in accordance to the court's ruling" (Shiri, 2016, p.21).

In this regard, two questions have to be answered from the jurisprudential perspectives: "is the halving of asset canonically authentic and influential?" and "is asset halving condition effective in equivalent remuneration's entitlement or not?" The canonical accuracy of the asset halving condition can be discussed within two formats:

- 1) Sharing of the Properties: it means that the husband is obliged based on this condition to share the properties he has acquired during his marital life with the wife. It seemingly seems that such a commitment is invalid because partnership has been accepted amongst the instruments of the contractual partnership of properties in Imamiyyeh Jurisprudence and this condition does not introduce an example of partnership in properties.
- 2) Conveyance of the properties: it means that the husband becomes committed to transfer part of the properties he has acquired during his marital life to the wife under certain conditions. The most important fault of this condition is its uncertainty in two respects: the first is that the amount of the husband's assets at the divorcement time is not clear during the marriage contract's conclusion so the amount of the property transferable to the wife is not clear. The second one is that the share given to the wife is not clear because the properties can be transferred by the husband to the wife for a maximum amount of half of the properties and the court may specify one third or one fourth or another percentage to be transferred to the wife. So, first of all, all of the husband's properties are unclear at the divorcement time and secondly the share and percentage that should be transferred to the wife is unclear (Shiri, 2016, p.21).

Two ideas have been posited regarding this fault: 1) the condition is invalid and devoid of any effect and there are additionally two ideas expressed in this regard. Some consider the condition as a part of the exchangeable items and some others know it independent from the exchangeable items. Based on the first premise, if the condition is uncertain, it would be generalized to the exchangeable items and they would be also unclear. Resultantly, the contract will be nullified as a result of which the condition will be also rescinded consequently. Based on the second premise, as well, the uncertain condition is invalid because the condition is a contract and a commitment and the subject should be clear in every commitment. Since the subject of the condition is uncertain, the condition would be rendered invalid. The difference in these two foundations lies in the idea that the contract would be also rendered invalid based on the first premise but it is only the condition that is nullified based on the second premise (Shiri, 2016, p.23).

The second idea is that the condition is correct because it repels the sale-specific risks and ignorance and, assuming that the repelling of the sale-specific risks holds for all of the exchangeable items in an absolute term, the marriage contract is not a sale contract wherein certain items are exchanged; and, even if it is assumed that the marriage is like a sale contract or a pseudo-sale contract, the uncertain condition is not absolutely invalid because the ignorance that can be transferred to knowledge does not bar the veracity of the contract and only a sort of ignorance blocks the authenticity of the contract that cannot be transformed to knowledge. In this issue, as well, the husband's amount of asset and the wife's share of this amount at the divorcement time feature the capability of being converted to certain knowledge and it is the court that makes them clear at the divorcement time. So, this ignorance does not bar the veracity (Shiri, 2016, p.23).

Resultantly, sewing of clothing is absolute and not suspended on anything. The second likely idea is that if Zaid's coming is the condition for the sewing of cloth, the contract would be definitive. In the first case, the contract is suspended and suspension targets the contract in its essence but, in the second case, the contract is definitive and the suspension only encompasses the condition and is not generalized to the contract in whole. The thing that is commonly understood from the above sentence is the second type that suspension of a definitive condition is not generalized to the whole contract's suspension" (Shiri, 2016, p.23).

Conclusion:

The present study was conducted for a comparative study of the position of marital life's equivalent remuneration in civil jurisprudence and Sunni jurisprudence.

In the present study, an answer was found to the question as to what are the jurisprudential premises of equivalent remuneration in Iran's regulations and also the issue was comparatively investigated in the civil jurisprudence and Sunni jurisprudence. According to the present study, the complete financial independence and freedom of a wife has been authenticated in the laws of Islam and Iran for acquiring and possessing certain properties and the wife is entitled to the reception of an equivalent remuneration for the tasks she performs beyond her canonical and legal duties at home.

Based on Iran's regulations, the conditions for receiving a wage and its qualities have been specified by certain articles and notes, including the note six to the article on the reformation of the regulations related to divorcement, that pertain to such affairs as the wife's demanding of wage, performing of tasks beyond the canonical duties, doing certain housework by the order and request of the husband, the non-entitlement to the equivalent enumeration in case of the husband's request for divorcement due to the wife's violation of her spousal duties or misbehavior and immorality of her and the wife's non-gratuitous intention in performing of the tasks.

The justification of the issuance of the order by the husband for the performing of the housework based on the principle of negation (of the order) is the duty of the wife and the justification of the non-gratuitousness of the performed tasks based on the principle of no gratuitous intention is the duty of the husband.

The courts are legally obliged to investigate a wife's demand for the determination of an equivalent remuneration and express ideas about it (confirmation or rejection of the wife's entitlement thereto). In case that the equivalent remuneration's entitlement is not justified, the courts are obliged to investigate the case and come up with their ideas regarding the entitlement of the wife to Nahleh (gift).

Corresponding to the general principles, the allocation of the wage to the cases that the divorcement is demanded by the wife and/or to the cases that the wife demands equivalent remuneration after the husband death and even during the marriage life seems to be devoid of any fault. However, due to the experts' non-following of a clear-cut criterion for the determination of the equivalent remuneration, various expertise opinions have been issued and the courts do not pay sufficient attention to the enforcement of the in-contract condition of the husband's assets as inserted in the marriage deed. Accordingly, the necessity for paying more attention in the jurisprudential resources for the creation of a procedural unity and elaboration of the regulations is felt more than any other time and the present study hopes to have set the ground for further studies in this regard for the concerned as well as the interested readers.

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