STUDYING THE EFFECT OF GRANTING WOMEN THE RIGHT OF DIVORCE ON INCREASE OF DIVORCE RATE IN IRAN (CASE STUDY: SABZEVAR CITY)

ESTUDANDO O EFEITO DE CONCEDER ÀS MULHERES O DIREITO AO DIVÓRCIO SOBRE O AUMENTO DA TAXA DE DIVÓRCIOS NO IRÂ

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Abstract

The family is the most important unit of any society; it can be called cell of any community. The most important and crucial issue in this community is divorce, which is growing rapidly nowadays. Divorce, in fact, is a mental action having legal consequences, and spiritually can hurt relatives and hence dissolve the unity of society. Due to unique status of family in Islam, it is tried to restrict the intention of parties to divorce, and because of that the right of divorce belongs to man. However, as will be discussed in following chapters, according to jurisprudential texts, legal and rightful analyses, there is a possibility as for granting the right of divorce to women, whether absolutely or conditionally. Even though, this study practically shows that granting the right of divorce to women can increase the divorce rate, and the researcher believes that granting the right of divorce cannot be a strong backing and does not guarantee the common life, so it is suggested to provide dowry with stronger guarantees for more legal equality.

Keywords: Family; divorce; unity of society; granting the right of divorce to women; legal equality.

Resumo

A família é a unidade mais importante de qualquer sociedade; pode ser chamada de célula de qualquer comunidade. A questão mais importante e crucial nesta comunidade é o divórcio, que está crescendo rapidamente nos dias de hoje. O divórcio, na verdade, é uma ação mental que

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tem conseqüências legais e espiritualmente pode ferir parentes e, portanto, dissolver a unidade da sociedade. Devido ao status único da família no Islã, tenta-se restringir a intenção das partes de se divorciar e, por causa disso, o direito ao divórcio pertence ao homem. No entanto, como será discutido nos capítulos seguintes, de acordo com os textos jurisprudenciais, análises legais e legítimas, existe a possibilidade de conceder o direito ao divórcio às mulheres, seja absoluta ou condicionalmente. Mesmo assim, este estudo praticamente mostra que conceder o direito de divórcio às mulheres pode aumentar a taxa de divórcio, e o pesquisador acredita que conceder o direito ao divórcio não pode ser um forte apoio e não garante a vida em comum, por isso sugere-se dote com garantias mais fortes para uma maior igualdade legal.

Palavras-chave: Família; divórcio; unidade da sociedade; concessão do direito de divórcio às mulheres; igualdade legal.

INTRODUCTION

The legal system of Islam as well as the Islamic Republic of Iran’s law give the right of divorce to the husband and a woman cannot divorce a man. Some criticize this system and try to challenge and express issues such as legal inequality of this right, but, on the other hand some jurists believed that the concept of legal equality has two definitions: first, the equal law for anyone and second, equality of anyone to law. As for the first definition, it implies that regulating rule should not be under the influence of factors such as sex, nationality, and religion. As for the second, the equality means there is no difference between people in executing the rule. In other words, in law enforcement phase the law passed for any cases should not differ in addressing individuals and cases. This take-away notion of equality does not stop us considering some differences in phase of passing the law. The equality meaning the sameness of man and woman is incompatible with Islamic law. Islamic law is based on justice. Holy Quran defines the aim of prophecy as to hold justice and fairness: “we sent aforetime our messengers with clear signs and sent down with them the Book and the balance (of right and wrong), that man may stand forth in justice”

3 al-Hadid, verse 25
needs and potential of each were canonized, from which one can mention the difference in the issue of divorce. Therefore, the tendency toward the equality of couples has no acceptability (Farajollah Hedayatnia, 2005:69).

In recent years one of the issues that increasingly grow based on legal and jurisprudential foundation is granting complete agency to woman in order to divorce. It should be noted that the unit of family has a critical status in Islam. The lawgiver limited the will of marriage’s parties in order to guarantee the life of community that depends in part the life of family as an initial unit of society. Men and women are two sides of the same coin, and Islam proposes the equality from the beginning of marriage, it means the balance should be held through the time. As men’s absolute right of divorce leads to women’s oppression, the absolute and unconditional right of women to divorce will cause men’s oppression as well. So there two should be designated their original status and then make judgment (Foruzan Alaee novin, 2010:108.)

Studying the emotional experiences of women’s brain, Mark S. George figured out that women do not react to emotions the same as men, women are more influenced by emotions (www.hawzeh.net.) granting the right of divorce to men is a supportive action, since the statics show that where the women has the this right the divorce rate will grow increasingly. More explicitly, field study was conducted indirectly in relation to the issue of agreed divorce in United States. More explicitly that in the United States the laws of marriage and family are among the laws that are made by the authorities in each state, so each state has its own marriage and divorce law which might be different from others. From 1970, a law was approved in the state of California namely “no fault divorce”, it means there is no need to prove other’s fault in order to get divorce in court, and agreement between couples is sufficient for separation, subsequently and gradually this law has expanded to other states, and hence this law doubled the divorce rate, for example in 1966 the number of divorce was 499000 and in the next decade the number of divorce has risen to 107700 (Mostafa Heravi, 1977: 81.) it can be concluded that giving full and unlimited freedom in social relation specially divorce can resulted in disintegration of family system.

Anyway, it seems that granting the right of divorce to husband in law and Islam, although an absolute right has not been granted, is due to eliminating the situation in which emotional and sudden decision is making and on the other hand strengthens the family unit. Therefore the approach of this research is that granting the absolute right of divorce whether to men or women bring about undesirable consequences for community, and to prove this it can
be claim that the Islam tries to stop divorce in many ways or reduce it as much as possible in Islam law to the “minimum divorce”. The base of this unbecoming phenomenon is for couples, children and society. The

Islam’s policy is based on “prevention of divorce” and “family consolidation.” Therefore if granting the right of divorce to husband (thing that is already recognized by the law and judicial process) was a desirable thing we would face another situation but it is not. High rate of divorce and increasing its number is a questionable fact. According to official sources, in Iran the ratio of marriage to divorce in 2014 reached to less than 4.5 (www.sabteahval.ir), almost one fifth, and this number in 2017 has risen to 175000 divorces a year, while the number of marriage is 609000 (Farajollah Hedayatnia, the same, 53.)

LITERATURE REVIEW

According to researcher studies no study has been conducted about the main subject of this paper, and whatever has been written in every aspect whether legal and jurisprudential texts as well as researchers’ articles are about the authenticity of granting absolute delegation in divorce. In fact, most of researches discuss about dos and don’ts and credit principles. Thus, this paper tries to study the effects of these principles and do’s and don’ts on community.

METHODOLOGY

The method of research is library and field study, it can be said that this is the first legal research which carried out in field study way. This is also a descriptive survey research. The sampling is a convenience sample and not random. Owing to the fact that accessing to statistical and judicial information of divorce was strictly limited this research has been conducted by the means of questionnaire and in-person interviews. In phase of library the articles, books, and jurisprudential texts were used, and in field phase a couple of populations were sampled and examined. The first population was divorced women whether they have the right of divorce or not; the attempts has been made to study the tendency to use the right of divorce and initiate divorce in Sabzevar city. Along with this population, another population of ordinary couples including men and women were examined and sampled, and also the tendency to have the right of divorce and tendency to grant this right have been studied in Sabzevar city. Eventually, three other populations were studied in terms of expertise, experience, and competent authorities
including attorneys, judges, and registrars of marriage and divorce in jurisdiction of Sabzevar city. It should be noted that the validity and reliability of the research questionnaire was confirmed by several psychologists, sociologists, and jurists. Before developing the questionnaire a round of interviews was carried out with attorneys and divorced women as well as sociologists. The statistical population of attorneys, judges, and registrars was 50 people, the statistical population of divorced was 100 people, and the statistical population of ordinary couples was 200 people.

Research’s statistical populations:
1. Divorced women
2. Ordinary couples
3. Attorneys, judges, and registrars

HYPOTHESES

Hypotheses resulted from library research that is tested in this study are as follow:

The main hypothesis of research predicts that granting the right of divorce or unconditional power of attorney in divorce to women are correct, but the researcher believed that as men’s divorce issues in civil law is bound to distress and constriction the granting it should be also bound to distress and constriction; it is because of the fact that having absolute and unconditional power to divorce for men can destabilize family. To researcher, granting the right of divorce to men from Islamic legal system is not unconditional, since divorce is considered as an unbecoming action, so this right should be limited whether for men or women. Particularly, granting this right of women who in making decision are under the influence of emotions (Female Brain, Louann Brizendine) and thus, put the family foundation at risk. Eventually, granting the right of divorce or unconditional power of attorney to women can increase the divorce rate.

Secondary hypotheses of this research are as follow:
1. In recent years the tendency to get divorce has been increased among women
2. In recent years the tendency to granting the right of divorce has been increased among men
3. There is a significance relationship between having the right of divorce and tendency to get divorce
4. The request for divorce from men is less than mutual consent divorce or request from women.
5. There are probably few women who have the right of divorce, though in recent years the tendency to get this right has been risen.
6. Increase of the divorce rate has not directly related with getting the right of divorce by women in recent years.
7. The right of divorce is not only an advantage for women but a disadvantage.
8. Perhaps the inspirers and encouragers are mostly divorced women, relatives, and families.
9. Probably, most divorces have gotten out of anxious, excitement whether in marriage or divorce.
10. There is a significance difference between social class, education level, and acquiring the right of divorce.
11. Granting the right of divorce will not necessarily bring a sense of calm and security in life.
12. Granting the right of divorce to wife has a negative effect on husband’s headship in family.
13. Society thinks that dowry is still safer than acquiring the right of divorce.
14. The right of divorce is a formal right and has not much legal effect.
15. Most of registrars refuse to record the right of divorce in the marriage contract.

Research questions:
The main question of research is that what will happen to divorce rate if the right of divorce or unconditional power of attorney is granted to women? Or is it related directly to increase of divorce rate in recent years?

PART ONE: CONCEPTS AND THEORETICAL FOUNDATIONS

Concepts

The concepts and definition of granting the right of divorce

The right of divorce means the right of officially dissolve the bonds of matrimony between married couples under the rule of law of Islam and the legal system of Iran that is belonged to man, and in legal system of west it signifies the legal dissolution of a marriage when
two parties are alive and they can remarry afterward. But from the perspective of Islam divorce means temporary dissolution of marriage under the particular condition from man side or his representative (Sedigheh Alimardani, Maryam Fatehizadeh, Mahmud Jalali, and Baghban, 2010.) on the other hand, delegation means assigning a task to another person, and delegation of unconditional power to divorce which is called in this paper as delegating the right of divorce to wife means delegating unconditional power to woman to part from her husband. Though, it should be noted that granting the right of divorce does not necessarily mean giving the right of divorce, as this right is not transferable, but mean the right of divorce will be delegated to wife to get divorce on behalf of her husband.

**Grounds for granting the right of divorce (unconditional delegation of divorce) to women**

First topic: rational grounds

To many researchers the divorce is a natural right of man on condition that he has a natural relationship with his wife. The right of divorce is due to specific role of man in love not due to his ownership. Divorce is relief while the marriage is possession-not in a way that man possesses woman. Divorce as a natural right is part of man’s characteristics. Nature gives the key to end a marriage to man, it means it is the man who simply by the loss of willingness to invest time, energy, and emotion into the relationship makes woman cold and indifference. When the man’s light of love disappears the marriage meet it end naturally. Woman’s way is also the same as man, although there are some differences (Motahari, 1978) Imam Khomeini has also said that Islamic legislator provide an easy way to get a divorce. It means if they inserted a condition into the marriage contract delegating to the wife the power to divorce they can separate whenever they want, or they can separate from husband under some condition such as misbehavior of man or marrying another woman, so there is no barrier for women to end their marriage (Khomeini, 1979.)
Second topic: Jurisprudential Grounds

First issue, granting the right of divorce from the perspective of Quran and Hadiths

There is no verse in Quran affirming directly the right of divorce to wife or husband, notwithstanding the fact that Quran supposed that this right belongs to man and he is dominant over woman. Quran propose some instructions and corrective command to safeguard the women’s right. Therefore, all verses related to divorce just talk about divorce in general, and neither of them talks of addressing the right of divorce to men or women, although in most of them it just talks about men as the one who get a divorce and women as the one whom got a divorce. Thus, it can be inferred from Quran that man can get a divorce from his wife.

As for traditions, Imam Sadiq (peace be upon him) about women who imposed condition of sleeping with and divorce on marriage contract said: she opposed the tradition, the right has given to one who does not belong to it. Imam ordered that man wields dowry, sleeping with, and divorce and this is tradition. When someone asked Imam Sadiq (peace be upon him) about a man who gives the right of divorce to his wife said: the power has given to one who does not own it in nature. He opposed to tradition, thus this marriage is not right (Al-Hurr al-Aamili, 1624).

Second issue, granting the right of divorce from the perspective of Jurist

According to Imamieh jurists, delegation of divorce is permitted whether delegated is present or absent in divorce. In conformation of this idea one can refer to some narrations coated from Said Al-A’raj (Wasail, hadith 1, page 333). It is also argued that divorce is a delegating action and it is not a personal affair requiring personal presence, thus, the absent person can also take an attorney for divorce and there is no difference between absent and present.

Sheikh Tusi and his followers believed that delegation of divorce for present person is not permitted. They cited a narration from Imam Sadiq (peace be upon him.) between these two narrations; Sheikh admitted the one that implicates the permission of delegation for divorce. In rejection of this implication it been said that this is a weak narration and cannot contradict Said Al-A’raj note. (Sheikh Muhammad Hussein Najafi, Jawahir al-kalam, vol. 32, p 23) (Seyed Hussein Safaee, 1360:77).
Third topic: Juridical grounds

Before approving civil law, the article 4 of marriage law act of 1310 that is not yet explicitly abandoned and it is still faceable provided that it is not contradicted with new rules. This rule states that parties of marriage contract can add any condition to contract provided that it would not disagree with marriage contract and its conditions (Hasan Safaee, 1360:82). The civil law act of 1313 in article 1133 gave total authority in divorce to man, although base on the article 1119 woman can ask for divorce through delegation condition. In 1346, under the law of family protection act in article 11 by rejecting article 1133 of civil law man and women are bound to be in the court if they want to sue the divorce. Although, there is a single article of the law on the amendment of divorce provisions approved by The Expediency Discernment Council obliged parties to be in the court and request the certificate of noncompliance. Therefore, practically, the delegation of divorce without conditions is not possible. In article 11 of the law of family protection act of 1346 the right of divorce was granted to couples in five cases. They are, first, five years imprisonment and more, addiction, husband second marriage, quit the family life, committing crimes violating family respect.

These conditions were added to the civil law. To some of parliament’s members some of these conditions are unlawful, as Quran said that man can have more than a wife, while this bill conditioned it to the consent of first wife. In response to this problem they argued that the article 17 will solve the problem. The article 17 of family protection law act of 1346 is: the regulation of article 11 will be added as terms of marriage contract and these terms and conditions explain the absolute delegation of woman to get divorce. According to the civil law this divorce is irrevocable. In this article it is not mentioned whether the husband is obliged or not, and if not what will happen to the article 11. Generally, if it should be as a part of divorce, then what is the significance of calling these conditions in this law (Hedayatnia, 1394:55, 56) In the amendment of family protection law act of 1353 gave the right of divorce equally to man and woman, and moreover, the legislator move forward and increased the wife’s authority in filing divorce to fourteen factors. Although most of these fourteen cases are the same as article 11 of the previous law and civil law, but some cases are new and are not in previous law such as lack of notice to court’s order regarding prohibition of working in carriers that are against family respect or infertility. It is said that in family protection law act of 1353 there was no need to add extra condition to marriage certificate. There was no need to meet the intention of legislators whether by integrative, legal, or arbitrary methods. After Islamic revolution some
of these cases were considered illegal and in 1358 legal bill of the Special Civil Court was approved and in the paragraph 2 of the article 3 of this law the right of divorce once again was given to man. In the beginning years after the Islamic Revolution and by approving the legal bill of the Special Civil Court in 1358 the facilitating process of divorce and its causes was bound and stopped. In the second bill of this article it is stated that divorce grounds are the ones that are set by religious law. This text, in fact, has two messages: first announcing invalid and discredited family protection law about divorce and restore to the first legislative situation of civil law of Islamic rules, and second, at the last article of this law it was stated claimed that any rules against this law is annulled. This article implicitly annulled the article 8 of family protection law of 1353. Passing the initial years of Islamic Revolution the process of facilitating divorce started. At that time, by the use of legislative and contractual methods the process of facilitating divorce accelerated (the same, 57). Eventually, now in the present civil law of Iran in as for delegation of divorce to women follows the Imamieh Jurists. In the civil law there are two articles considering delegation in divorce. First, the article 1138 that prescribes a lawyer in divorce and it is not applied the delegation to wife, and the other is the article 1119 that pertains the delegation of woman in divorce through additional conditions of marriage contract.

According the article 1119 of civil law parties of marriage contract can impose any condition if only it is not confronted contractual agreement, conditions such as: if man marries another woman, or to be absent for a definite time, or does not pay alimony, or make an attempt on the life of woman or make an attempt to make life unbearable. After proving one of these conditions woman can sue divorce.

The Supreme Judicial Council in 1362 approved two conditions as the additional conditions of marriage contract and announced the rule for the execution to the Registry Organization of Documents and Estate. The first condition was financial and the second was delegation of divorce that gave the unconditional power of attorney to woman from man. Since 1361 the delegation of divorce right condition was written in marriage contract. In addition to twelfth conditions printed in the Nikahnama, women can propose other suggestions such as the right of continue education, the right of choose the location to live, the right of work and et cetera. By these conditions women can file for divorce, although after proving husband’s violation of these rights printed in the Nikahnama, and thus get divorce (Foruzan Alaee Novin, the same, 118). Accordingly, any legal agreement can be applied practically under the condition form. Parties can change the consequences of contracts and replace their agreement with legal obligations through setting additional condition to the contract. Therefore, conditioning is the
title that gives each party to mitigate and modify legal consequences of their actions. The history of contractual method in mitigating divorce backs to preIslamic Revolution and the article 17 of family protection law. After Islamic Revolution and annullment of articles considering divorce in family protection law, the mitigating divorce once again provided through contractual methods, in order to do so, the mentioned matters in the article 8 of family protection law of 1453 have been added to marriage documents. There are two clauses in the marriage documents of IRI that the second is related to the delegation of divorce as follow: through marriage contract/separate binding contract the irrevocable power of attorney with the right of appointing third party will be given to woman by which she can refer to the court and gain the required permission and finally get divorce. The irrevocable power of attorney with the right of appointing third party is given to wife from husband.

Regardless of various problems in the way of imposing condition of delegation of divorce, the procedure of registry offices is also very problematic. Due to professional text of contract couples do not have a complete understanding of the content. On the other hand the officers often do not attempt to describe the text. The terms of contract though mostly is signed by the husband. Accordingly, this signature is a matter of question. Although, the Supreme Judicial Council has ordered the Registry Organization that all marriage and divorce offices should read the content of marriage contract and define it as a religious and legal task, they are obliged to hint couples that there is no force to accept all conditions of Nikahnama and these conditions should have been negotiated by parties (Circular no. 10/220 according to the letter 1/53541 of the Supreme Judicial Council (Zahra Chavoshi, 1387:1180). Thus, the agreement in a form of written terms in Nikahnama is suggestive and couples can negotiate over some or all of them, or they can add an extra condition. But the fact is that young couples having no experience and awareness take part in ceremonial party and without any reading and consideration just sign the contract. The registry officers should distribute a copy of terms and conditions of marriage to those who want to marry; they can study them in sufficient time and they can consult with family and friends so that within reason they can decide. Moreover, in order to inform public a comprehensive text should be provided and distributed among volunteers so that they turn desired issues into terms and conditions of marriage. It can prevent family conflict after marriage. Although husband usually does not give unconditional power of attorney to his wife unless it is mentioned in Nikahnama, thereby by referring to the court and proving one of the twelfth factors in the marriage contract she can get divorce and part the company with his husband. These conditions are not restricted and can be added to. Even the
couple can set the delegation of wife and it seems rational to give the power of attorney (Katozian, 1385, volume 1, p 267). Therefore this condition is neither against the requirements of the substance of contract, nor illegal, thus there no problem in its nature (Safae, 1375, p50). Although granting the authority of divorce to wife needs referring to the court and getting the certificate of noncompliance (Katozian, the same), this eventually is up to the judgment of the court and decision is made after investigating reasons. Finally, the information and statistics have showed that by the approval of the Supreme Judicial Council in 1362 and consequently by granting the power of attorney to wife with the right of appointing a third party from man even limitedly and in form of constraints mentioned in the marriage contract-that is a kind of distress and constriction- the divorce rate increased. (Vahdati Shabiri, Abdipour, Moqadas Jafari, 1390). Unfortunately due to recent order of prohibition to release the divorce rate in Sabzevar Province we could not reach the information in all organization including governorate, the Registry Office, and the Real State Registry Office; they argued that the divorce rate of this period of time is eliminated, but there is a similar information about divorce rate in Kerman from 1360 to 1365 that is available in one of articles and it can be helpful in reviewing the effect of this approval on the increase of divorce rate.

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<td>1362</td>
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(Farajolah Hedayatnia)

**Fourth topic: Legal grounds**

Owing to the fact that advocacy is an authorized contract, so it should be added to a binding contract, thus usually it is a part of marriage contract or as conditions of other binding contract. This advocacy can be depended to conditions or be as an absolute delegation. (Diani, 1379:16).

Although it is true that Muslims are bound to their obligations, not all conditions are enforceable, as some terms and conditions are against the general purpose of the law and legislators and may also against the requirements of contract or unreasonable that are invalid,
and they can void the whole contract. The condition as an integral part of contract means the commitment of parties on secondary obligation beside the original obligation that are three types: A. the qualitative terms, which is related to the quality and quantity of contract such as type and description of object of sale or a remarkable quality like high education level or cutie for gold; B. the affirmative condition: commitment to perform or does not perform from parties like a condition under which husband should not get a particular job or change the address or remarry; C. the corollary condition: stipulation of realizing a condition out of the contract that might be the result of legal or judicial contracts (Article 234 of civil law, Katuzian, 1390, vol. 3, p 296-298). The corollary condition is a type of condition the creation of contract itself is sufficient in realization of it and need no other creation (Aminfard, Farshi, Rahmani Pachi; 1394:182). It seems that adding the right of divorce for woman or power of attorney is a corollary condition, but void conditions are as follow: a condition which is against the substance of contract (it refers to a condition that void or reject the direct effect of contract, and uncertain condition that not knowing it leads to be in ignorance of considerations, thus due to the fact that the right of divorce is not uncertain condition and has not to do with consideration so this condition does not violate the marriage contract, even if the violation of the right of divorce is as marriage portion since the dowry is not a main pillar of the permanent marriage (Aminfard, Farshi, Rahmani Pachi; 1394: 184). On the other hand, void conditions are conditions of vanity which have no use and profit, it means this condition has no reason or result, while the right of divorce is not unreasonable right and it is within reason. The impossible condition is the condition that responsible person generally is not able to perform the condition whether the condition is impossible in terms of creation or in terms of legal and judicial, because the action that has a legal or judicial prohibition is considered as rationally impossible, so an illegal condition is impossible condition. This fact is also true for getting paid, and experts believed that being illegally impossible is the same as genetically impossible (Bojnordi, 1428, vol. 2, p 157). Grating the right of divorce to woman is not impossible. But as for being illegal or not, first it should be noted that an illegal condition is called a condition which is against compulsory rules or public order or morality (Katuzian, 1390, vol.2, p288). In jurisprudence this is a condition which is against Quran and tradition, and it is not against jurisprudence as discussed in the juridical grounds.
PART TWO: THE EFFECT OF GRANTING THE RIGHT ON GROWTH OF DIVORCE RATE

First topic: common couple population

specifications of population

57.7% of all interviewees are between 31 to 45 years old, 14.2% are between 46 to 60 years old, and finally 28.2% are between 18 to 30 years old. Thus, it has been tried to study on all age groups, and more specifically, it has been tried to study in experienced people or mature who show less excitement in their answers. The researcher has tried to investigate over couples with different years of marriage, to do so, more than 23.4% of interviewees by 5 years of marriage and less, 16.5% by 5 to 10 years of marriage, and 58.8% by more than 15 years of marriage, although the interviewees with the most excitement and the least excitement are more questioned and considered than those with less than 5 years marriage. As it was predictable, most of population have bachelor degree, and then diploma degree, and generally the number of those with bachelor degree are less than those with lower education level; 41.2% of population have bachelor degree, 20% of population have diploma degree, 14.1% have master degree, 14.1% have associate degree, 8.2% have under diploma degree, and finally 2.4% have doctorate degree.

In this research 17.6% of population has the right of divorce and the rest of 82.4% do not have the right of divorce, so it seems that acquiring this right is not yet prevalent and most of the population does not have it.

Effective factors in the tendency to acquire the right of divorce
reasons of tendency

In the reviews it becomes clear that 52.9% of population believed that the most effective factor in such a leaning to acquire the right of divorce is experience of other’s life, moreover, 36.5% that awareness of relatives and family also play a major role in this regard. 24.7% of population argues that rules that support man is the main reason to looking for this right. This may indicate that a perception in society that the rules are in favor of men, it can be the result of inappropriate execution of law such as referring to distress and constriction in filing divorce from men in courts. Eventually, 18.8% of interviewees believed that media is an effective factor, and 18.8% of population believes that knowing the rules is the effective factor in the intention toward getting the right of divorce. Although, as it become clear through interviews that most of those who got the right of divorce are educated in field study of or relatives of those who knew the rules. Finally, 4.7% consider other factors in tendency toward acquiring the right of divorce such as fear of betrayal or decadence of society.

II. The relationship between social class and the tendency toward getting the right of divorce

A remarkable fact in this research is that more than 56% of population believes in the fact that upper class are more likely to get this right and this is because of their selfconfidence and in case of divorce they have an strong background family to support them and can remarry easily.
The relationship between education level and the tendency toward getting the right of divorce

60% of population believes that the more educated women are the more they show tendency for acquiring the right of divorce, although 38% disagree with this correlation, and 2% have no idea. But maybe the reason is that this social class has more confidence and it seems that they should not undergo any bully from husband, they are not patient enough, and on the other hand, they are hoping to have more opportunity to remarry and getting a job by the support of their family.

It should be pointed that from interviewed women who had the right of divorce 40% had bachelor degree, 20% had master degree, 13% had diploma, and 27% had associate degree, thus as it seen generally 60% of them had bachelor degree or master degree. The reasons might be that the women with master degree are less than others and accordingly they have a better and comprehensive understanding of life as well as more information, maturity and also being older so they are more likely to acquire the right of divorce and have this tendency.

The consequences of getting the right of divorce

The effect of gaining of the right of divorce on the sense of safety and security in the life

Most of interviewees in this population believed that the right of divorce not necessarily brings about peace in common life, and this indicates that the right of divorce will not necessarily keep peace and tranquility in common life. 51.7% of interviewees believed that gaining the right of divorce will not necessarily bring about a sense of security and calmness in common life, and 30.6% argued that gaining such a right can guarantees the sense of security and peace in common life, and 17.6% had no idea. These statistics indicate that this criterion was not effective enough in increase of tendency toward acquiring the right of divorce.

The relationship between gaining the right of divorce and granting the dowry on the persistence of marital life were studied over interviewees. 62.2% of population believed that acquiring the right of divorce with granting the dowry does not guarantee the persistence of common life, and it rather arise a sense of indifference in man toward the persistence of marital life by the reason that there is now no excuse for man to refuse giving the right of divorce to
woman. 20% of population believed that this right can guarantee the persistence of common life, and the rest had no idea. According to the conducted study even getting the right of divorce with the right of gain dowry that seems to be a strong guarantees for men to keep taking care of common life, cannot guarantee the persistence of common life. 68% of population disagree the notion that getting the right of divorce even with acquisition of dowry can be strong guaranty, and 21% of population agree with this, and the rest of 21% had no idea.

The interesting point is that the majority of population will not grant the dowry for gaining the right of divorce; it might indicates that still with all restrictions the dowry is more powerful means to guarantee the future life of women and keeping the common life of spouses.

The effect of gaining the right of divorce on controlling men

According to the research 51.8% of interviewees believed that the right of divorce is not necessarily a means to control or monitor men, 41.1% agreed with this fact, and 7.4% had no idea. Eventually, it may indicates that the solidarity of common life requires more fundamental and solid principles than granting the right of divorce would control men and keep the stability of common life.
III. The effect of gaining the right of divorce on relationship between spouses

The majority of population (53%) believed that this right has no negative impact on the relationship between man and woman, but the oppositions (38%) by a slight difference believed in negative effect of granting the right of divorce, and the rest (8%) had no idea. But the interesting point is that 45% of this people believed that granting the right of divorce has a negative effect on headship of man and this in turn can weaken the common life since men always manage the common life. An interesting case of these interviews was a woman claiming his husband feels feeble and threatened to murder her just because he granted the right of divorce to her.

![Pie chart showing the negative effect of granting the right of divorce on headship of man in family](image)

The effect of getting the right of divorce on increase in divorce rate

Initially, according to studies, 84.7% of population believed that the tendency toward the right of divorce has increased in recent years; in response to the main hypotheses of this research more than 61% of research population believed that granting the right of divorce to women will increase the divorce rate.
SECOND TOPIC: DIVORCED WOMEN POPULATION

Characteristics of population

It is tried to interview with divorced women from all ages as 51.1% are between 31 and 45 years old, 40.7% are between 18 and 30 years old, and 7.4% are between 46 and 60 years old. It has been tried to use mostly from experienced people or those who are more mature with the least excitement in expressing their ideas. As it was predictable, the majority of population have bachelor degree, and then diploma, and generally, the number of those who have diploma are more than those who have bachelor degree and more (48.1% bachelor degree, and 7.4% master degree.)

It is worth knowing that 40.7% of divorces are due to lack of understanding, 25.9% addiction of husband, 22.2% misbehavior, 18.5% betrayal, 7.4% not to pay the dower, 0% criminal conviction, and other grounds. As it can be seen, the highest divorce rate comes from lack of understanding. This indicates that the decisions made in the time of marriage and divorce is more hasty and emotional, and there was no sufficient time to think wisely in these times. Therefore the emotion should not be at hand in time of making crucial decisions, because it may ruin the whole family. In this population

18.5% had the right of divorce and 81.5% didn’t have. This statistics show that gaining the right of divorce is not still prevalent and popular, but it is going to be. Almost 19% of population of study had the right of divorce.
According to studies women have a role in divorces and this role is considerable, as 77% of divorces were uncontested and in these divorces women had a considerable effect. Almost 18.5% of divorces were requested by women and the rest by men; this shows the role of women on the increase in divorce rate.

Factors affecting on tendency toward getting the right of divorce I. Reasons of this tendency

Getting the lesson from other’s experiences with 44.4% have the most effect on the tendency toward gaining the right of divorce, then the influence of relatives who are aware of rights and rules of women, and finally the belief in society that rules are in favor of men are respectively the effective factors.

According to the interviews 63% of research population agreed with the fact that upper-class is more likely to have the right of divorce, 18% disagreed and the rest had no idea. As it mentioned formerly, it might be because of the fact that the upper-class of society perhaps have a high self-confidence and in case of divorce they are backed up with a strong family so that they can more easily remarry and on the other hand, they are not to be blame.
The relationship between education and tendency toward getting the right of divorce

More than 48% of research population believed that educated women do not necessarily have the tendency toward getting the right of divorce. The reason may be the fact that increasing the awareness of people to the phenomena of divorce and the right of divorce comes from media and this brings about a situation in which even uneducated women demand the right of divorce.

THE CONSEQUENCES OF GETTING THE RIGHT OF DIVORCE

The effect of getting the right of divorce on the sense of security and peace in life

43.3% of this population disagreed with the fact that the right of divorce necessarily brings about peace in life and reinforce the common life, 22.3% disagreed, and 10.7% had no idea. Moreover, 40% disagreed with the fact that having the right of divorce without having the right of demand dowry will assure the enforcement of common life, 15% agreed and the rest had no idea.

One of the most important points that discussed earlier was that the aim of dowry is to make balance between spouses in the marriage contract, but it seems that the majority of
research population does not give away the dowry in return for the right of divorce. And this indicates that the dowry still is stronger means to ensure the future of women than the right of divorce.

The effect of getting the right of divorce on controlling men

In divorce women population, 59% believed that having the right of divorce can be a means to control spouses, 30% disagreed and 11% had no idea. It can be argued that the high percentage of the right of divorce on controlling men derived from vulnerability of women in current society, especially in population of divorced women. It cannot be regarded as an experimental phenomenon since it was discussed formerly that most of women prefer forgive the dowry to getting the right of divorce; yet the dowry is stronger means to control men.

The effect of getting the right of divorce on spouses relations

The interesting fact here is the 59% of this population believed granting the right of divorce exert a negative effect on headship role of man in family and this will shake the common life in turn, as men always manage the common life. One of the surprising points in this discussion was a woman who claims his husband feels weak by granting the right of divorce and even threatened to murder her if she files for divorce.

In this population, more than 40% believed that getting the right of divorce has a negative effect on emotional relationship of man and woman; this, in comparison with following
graphs pertaining of getting the right of divorce, indicates that the tendency toward getting the right of divorce is an emotional tendency rather than rational in women.

The effect of getting the right of divorce on increase of divorce rate

89.9% of this population believed that the tendency to getting the right of divorce has been increased in recent years that can be a result of increasing the divorce rate. Hypothesis testing of main question of research show that more than 42% of people in research population believed that granting the right of divorce to women cause an increase in divorce rate, 40% also believed that those who have the right of divorce are more willing to get divorce, 35% disagreed this point, and the rest had no idea. Thus, it is as if this right creates an incompatibility between husband and wife. Moreover, as discussed previously, one of the factors affected in tendency toward getting the right of divorce has been the others’ experiences, and this graph shows that divorced women persuade wife to get the right of divorce and this underlines the influence of others’ traumatic experiences on those who want to marry.

However, more than 53% of studied population believed that granting the right of divorce has no legal effect and this is the confirmation of hypothesis, as it became clear for researcher by referring to Sabzevar’s courts, that judges and judicial authorities do not consider
any credit for unconditional power of attorney out of marriage contract and matters of distress and constriction. Despite granting this right in offices of notary publics, judges interpret this right within the framework of distress and constriction, as we said before, the right of man to get divorce depend even on distress and constriction matters, though by referring to the judges, it became clear that in some cases man’s right of divorce is applied in absolute way.

THIRD TOPIC: NOTARIES, ATTORNEYS, AND JUDGES

Characteristics of population

66.6% of this population were 30 years old and more and this represents a kind of maturity in their opinions; moreover, 43.3% of experts who were interviewed had master degree, 40% had bachelor degree, and generally 80% of this population are high educated, thus they express their profession accompanied with practical experience, and this make their opinions not only are empirical but also have academic credentials.

Factors affecting on tendency toward getting the right of divorce

Reasons of this tendency

As you see in graphs, other’s experiences in life have the most effect on tendency toward getting the right of divorce in women, and then the influence of relatives and family who are aware of rules, and finally the belief in society that rules are in favor of man.
The relationship between social class and tendency toward getting the right of divorce

53% of this population believed that upper class of society is more willing to get the right of divorce.

III. The relationship between education level and tendency toward getting the right of divorce

According the study 56% of population believed that women who have higher education are more likely to get the right of divorce.

Consequences of getting the right of divorce

The effect of getting the right of divorce in the sense of security and peace in life

It is worth knowing that 54% of experts believed that the right of divorce do not necessarily bring about peace in common life, this indicates that the right of divorce is not necessarily a strong guaranty for enforcement of common life. Moreover, 56.7% of this population believed that getting the right of divorce along with getting dowry, although it looks a good guaranty for spouses, but they don’t guarantee the stability of common life. eventually, as for the relationship between getting the right of divorce and forgiving the dowry and their effect on stability of common life, 70% of experts believed that getting the right of divorce along with forgiving the dowry cannot be a strong guaranty for common life, and even can make man

The most effective factors in tendency toward the right of divorce

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<thead>
<tr>
<th>Factor</th>
<th>Percentage</th>
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<tr>
<td>MEDIA</td>
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<tr>
<td>RELATIVES AND FAMILY</td>
<td>30</td>
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<tr>
<td>RULES SUPPORTING MEN</td>
<td>23.3</td>
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<tr>
<td>OTHERS' EXPERIENCES</td>
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<td>KNOWING THE CURRENT LAWS</td>
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<td>OTHERS</td>
<td>26.7</td>
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indifference toward the stability of common life; as there is no dowry to prevent man from divorce.

**The effect of getting the right of divorce on controlling men**

65% of interviewees believed that the right of divorce is not necessarily a means to control men; it might be because of the fact that stability of common life requires more rigid principles than granting such a right can control men and make common life stronger.

**The effect of getting the right of divorce on relations of couples**

50% of legal experts believed that granting the right of divorce have a negative effect on emotional relationship between man and woman; it seems a kind of shake off in common life.

**The effect of getting the right of divorce on increase in divorce rate**

More than 56.7% of this population believed that granting the right of divorce will increase the divorce rate. 70% agreed that the divorce rate has increased in recent years. Though, as it is shown in following graph the divorce rate in recent years are not necessarily directly related to increase in divorce rate.
Finally, more than 89% of legal experts having experiences in this issue do not recommend such a right of divorce for women, and hence they show little tendency toward getting the right of divorce.

Fourth topic: possibility of indicating unconditional power of attorney for woman to file for divorce in the marriage contract

Unfortunately there is no definite and precise rule about the possibility or prohibition of indicating unconditional power of attorney to file for divorce or the right of divorce in marriage contract. The interesting point here is that, according to studies, unconditional power of attorney for divorce is rarely granted by officinal marriage offices or as an integral part of marriage contract, and spouses should refer to notary public to get this right.

CONCLUSION

According to Imamieh’s famous quote as well as civil law the unconditional power of attorney in divorce or granting the right of divorce is permitted for women.

Unconditional power of attorney clause as a part of marriage contract is a corollary condition.

Granting the right of divorce to women increases the divorce rate, and those who have a right are more likely to get divorce. The tendency to the right divorce has been increased in recent years, although there are a few women who get this right, thus, increasing the divorce rate is not directly related to the divorce rate.
It seems that women play a major role in divorces of studied population, the motivation in getting the right of divorce are first others’ experiences (especially divorced people), then family and relatives.

It seems that people with higher social class and higher education are more willing to get the right of divorce.

It appears that granting the right of divorce does not necessarily bring about peace in life or make common life more stable; it also may has a negative effect on emotional relationship of spouses and headship of men in family.

It seems people still think of dowry as a strong means to guarantee the right of women and the stability of common life, and most of women don’t like to give it for acquiring the right of divorce.

It seems that granting the right of divorce has a legal effect; the resulted divorces is considered irrevocable from the perspectives of judges, attorneys, and notaries, however, there are a lot of people who support the revocability of divorce.

It seems that most of divorce right cases are gained through notary publics and after the marriage, although notaries refuse to record it.

It seems that granting the right of divorce or the unconditional power of attorney to women leads to increase in divorce rate, and the right of divorce is not only in favor of women, but also will hurt them since they are not supported after that. Yet dowry is a better support for women and stability of common life, so in order to maintain a balance in contract and keep the honor of the family we should move toward strengthen executive guaranties of dowry and not granting the right of divorce.

Eventually todays, if a man wants to file for divorce he should get the permission from court, and then refer to the notary public to officially separate from his wife. If a woman, by mentioned grounds, wants to file for divorce should get the husband’s requirement to divorce; therefore, nowadays divorce is granted only by the court, the court get a divorce for woman and husband cannot solely apply for divorce and get it.

In other words, there is no such a thing as inequality in divorce in today’s legal system, as wife can sue for divorce based on twelfth conditions of distress and constriction, and the right of divorce for man also is bound to distress and constriction. Although according to studies, in practice divorce is granted unconditionally and without referring to distress and constriction. It is recommended that the dowry should be underlined and empowered in order
to protect women’s rights and benefits, and reduce the divorce rate as well as make common
life stable through obligatory factors or more guaranties.

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