

THE FAIR EQUIVALENT REMUNERATION FOR WIFE IN IRANIAN LAW

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Abstract: One of the financial rights recognized after the victory of the Islamic Revolution in the case of women was the right to claim for fair equivalent remuneration in wifehood days. Since 1992, under the law, it was possible for the wife, under certain circumstances, to claim works that the Shari'a did not oblige them and has performed on the orders of the husband and in order to receive wages. Of course, in 2006, the Expediency Discernment Council approving a note under Article 336 of the Civil Code, eliminated many of the constraints and given the wife the opportunity to demand that at any time the fair equivalent remuneration by lodging a petition, unless the husband is an applicant for divorce, in which case, the claim for fair equivalent remuneration will not be subject to the lodging of the petition.

Keywords: Donation (doing a thing voluntarily), order, fair equivalent remuneration, dividing in halves (dividing properties into two equal parts), wifehood.

INTRODUCTION

The family is a sacred and valued institution which regulation of the legal relations of its members has always been one of the most important concerns of legislators in all countries. Our country (Iran) is not excluded from this general rule, and the study of the laws established in recent decades shows that the maintenance of family solidarity and related legal relations in all periods has been considered by the legislature, since, in spite of the contractual nature of marriage, the provisions relating to this contract and the ways of its dissolution were approved separately and in the second volume of civil law, and then several laws have been introduced in this regard, the most important of which are Family Protection Laws adopted in 1967 and 1974, and the law on the reform of divorce regulations adopted in 1992 as well as the family protection act of 2012. Of course, a large part of these laws and, in particular, extraordinary regulations are mainly aimed at better women's rights in families.

One of the most important rights and privileges attributed to women after victory of the Islamic Revolution is an institution called the fair equivalent remuneration of wifehood days, which the similar can't be found in the pre-revolutionary positive law. The fair equivalent remuneration institution was first approved, under certain circumstances in the sixth note of the article on reforming the divorce law approved in 1992, and in the years after the enactment, lawyers and judges always reviewed the

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provisions in different ways, until In 2006, a note from the Expediency Discernment Council was annexed to Article 336 of the Civil Code and created a special situation regarding the fair equivalent remuneration of wifehood in Iranian law. Subsequently, Article 29 of the Family protection Act of 2011 also added to the ambiguities in this field. The same and sometimes sudden challenges and ambiguous changes caused the present article discuss about the fair equivalent remuneration of wifehood and, while reviewing its historical background in the law of 1992, analyzed the current provisions of this institution in our country's (Iran) positive law, in order to by these investigations and analyzing the existing laws and examining how they are ratified and criticizing these rules, we can better clarify the legal status of the wife and take a step towards helping to better and more accurately judge and receive this financial right. In particular, our country's (Iran) law professors still do not seek to review the new regulations on the rights on fair equivalent remuneration of wifehood in their work.

To achieve the goals mentioned, we will divide the present article into 3 sentences that first of all, in the first sentence we will define the concept of fair equivalent remuneration. Then, in the second sentence, we examine the historical background of fair equivalent remuneration of wife in Iranian law, and finally, in the third sentence, we will examine the current state fair equivalent remuneration of wife in Iranian law and analyze the existing rules and criticizes them.

The Concept of Fair Equivalent Remuneration of Wife

The first step in examining the subject matter of a fair equivalent remuneration of wife is to define the term referred and to clarify its dimensions. The word "fair equivalent remuneration" in the word means wages, fee and salaries (Moein, 1, 1992: 148- Dehkhoda, 1, 1993: 884). In the field of law, the remuneration is twofold. The first one is the specified rent, the amount of which is specified and determined in the agreement between the parties of the contract, such as rent and the other part, is fair equivalent remuneration which is defined by lawyers as follows: "If someone benefits from another property and the same property remains and for a period of time benefited between the parties no rent had been designated, whatsoever is paid as the remuneration of interests to the owner of the property is called fair equivalent remuneration, whether it be with the permission of the owner or without his/her permission "(Jafari Langroudi, 2009: 10 and 11)". It should be noted that in the above definition, it is only referred to receiving from another property and fair equivalent remuneration is defined as consideration paid for benefit from another's property, while, according to the definition: "The common sense of receiving, especially in the discussions of the sources of obligation, it is the enjoyment and profit of another property or act (practice)" (Kathuzian, 2006: 239) and Article 336 of the

Civil Code¹, which emphasizes the use of another act (practice), came under the heading of the receiving, and we know that, in accordance with Article 307², the receiving of the means of creating delictual liability and in its particular sense does not have a contractual relationship (aspect); therefore, receiving from another's act (practice) also requires payment of the fair equivalent remuneration. Therefore, one of the authors, in order to complete the definition mentioned, has said: "The fair equivalent remuneration is the opposite of specified rent, and refers to the wage that the people usually pay to doer for an act (work), and is not mentioned and designated" (Feyz, 1999: 267). Therefore, according to general principles, anyone use any other's property or act (operation), and there is no contract between him and the owner of the property or the doer of act, he must pay him fair equivalent remuneration of such receiving.

One of the most important examples of receiving is the husband's enjoyment of the wife's actions and its results during the wifehood. Throughout her life, wife generally performs various acts. Some of these acts are legally and religiously vested in women and are among their duties, such as specific obedience, the subject matter of Article 1108 of the Civil Code³, or general obedience, such as good companionship⁴ and assistance (cooperation) to husband in establishing family bases and parenting⁵.

The consideration paid of the legal duties mentioned above, is an alimony which is obliged to wife, and the wife is entitled to receive it if she obey her husband. But the practice of women in families is often not limited to the above, and women, in addition to performing their duties at the husband's house, are doing things that they are not legally and religiously obliged to do. Such as cooking, grooming and giving milk to the child, etc. These acts are also respected as any other act and their doer, in accordance with the general rules relating to receiving, has the right to receive their fair equivalent remuneration; since these are not included in the number of her duties. Also, in the majority of cases concerning the wife's remuneration, a contract between husband and wife is not assigned to be called the specific rent, and the issue should be put forward in the form their fair equivalent remuneration.

¹ Article 336 of the Civil Code: "Whenever an individual exercises an act (work) in accordance with another's order, which the custom has assigned a **remuneration** for that act or that person ordinarily (habitually) is ready for doing it, the doer shall be deserved to receive remuneration of his/her actions unless it is apparent that he intends to donate".

² Article 307 of the Civil Code: "The following matters shall be the subject of delictual liability: 1 – usurpation and what is in the verdict of usurpation. 2 – Waste 3 – causality. 4 – receiving

³ Article 1108 of the Civil Code: "Whenever a woman without a legitimate (religious) obstacle refuses to perform wifhood duties, she shall not be entitled to alimony."

⁴ Article 1103 of the Civil Code: "husband and wife, are obliged to establish good companionship with each other."

⁵ Article 1104 of the Civil Code: "Couples shall be in a position to assist one another in establishing the foundations of the family and parenting".

Thus, the sixth note of single article on the amendment of the provisions related to the divorce also called the said amount as fair equivalent remuneration, and calls it consideration paid for acts (works) which in the Shari'a (religiously) is not the responsibility of the wife. Of course, the following clause (note) of Article 336 of the Civil Code (which we shall further examine further) has added another provision to the definition of the fair equivalent remuneration of wife and states: "If the wife has done the things which is not responsible for religiously and the custom has prescribed fair equivalent remuneration for it and it has been done by the order of the husband and has not intentioned to donation, and it is also proved to the court, the court will calculate the fair equivalent remuneration for works done, and decides to pay it". Thus, according to the above-mentioned regulation, an act deserves to be remunerated that the custom also prescribes fair equivalent remuneration for it.

With regard to the above, the fair equivalent remuneration of wife can be described as following: the meaning of fair equivalent remuneration of wife is a non-contractual consideration paid that must be paid to wife due to her acts (works) during the marriage, and its amount will be determined according to the convention (custom), provided that first of all, the act mentioned legally and religiously isn't included in the duties of the wife and as rather (consideration paid) her alimony; secondly, the mentioned act (practice) in the community is also worthwhile and habitually is the subject of remuneration. Of course, the eligibility of a wife to receive fair equivalent remuneration is likewise provided on another condition that we will address them in subsequent sentences. Therefore, the two conditions are only the co-ordinates and constraints of the definition of the fair equivalent remuneration, and the conditions of belonging fair equivalent remuneration to the wife are not exclusive to the two cases.

Historical Background of the Fair Equivalent Remuneration of Wife in Iranian Law

As stated in the introduction of present paper, before 1979, the fair equivalent remuneration of wife institution had not been recognized by Iranian law. Of course, Article 11 of the Family protection Act of 1974 spoke of a monthly salary in some circumstances; the Article stipulated: "The court may, at the request of either party, if the issuance of a certificate of noncompliance is documented to misconduct and failure by other side (party), condemn him to a monthly appropriate monthly salary on right of other according to condition and the age of the parties and the duration of the marriage, provided that the inability of the applicant and the other party's ability is established, the payment of the said salary in case of remarriage by winning party or creating adequate income for him or reduced income or destitution of losing party or death of the convict (losing party) by the judgment of same court will be reduced or discontinued". As can be seen from the text of the article, the provisions of the judgment contained a monthly salary and can't be considered to be

similar to fair equivalent remuneration of wife institution, since, firstly, according to the aforementioned text, the obligation to pay an allowance (salary) is related for both parties and is not exclusive to husband; secondly, the actions and efforts of the two parties did not affect the determination of this allowance (salary), and its amount depended on the destitution (inability) or the ability of the parties, and therefore the article ruled on a kind of damages and not the fair equivalent remuneration.

The issue of fair equivalent remuneration for wife was first accepted in the sixth note of amending law on divorce law, adopted on 19/11/1992. Of course, in approving this note, there were disagreements between the Islamic Consultative Assembly and the respectable Council of Guardians: "The Islamic Consultative Assembly approved the following text in the form of Note 6 to the Law on Amending the Law on Divorce: if a man unjustly and far from fair is determined to divorce, based on court order, fair equivalent remuneration of marital years should be paid by husband to wife. In this note, for a woman to be divorced unjustly and unfairly, a new financial right (entitlement) has been foreseen that was not specifically addressed in the financial relations of the couples before. But the Guardian Council proclaimed note 6 as contrary to the Shari'a, and argued that a woman usually do things in her husband's house as a donation act, and this is an objection that, if she intends to donate, she can't subsequently claim the fair equivalent remuneration. For this reason, the parliamentary approval was not approved by the Guardian Council and was returned to the House to amend the Shari'a objection, which the representatives insisted on in their previous opinion. As a result, in accordance with Article 112 of the Constitution, it was sent to the Expediency Discernment Council to determine the final task "(Roshan-Mehrpour-Mohammadi, 2011: 59 and 60) and, finally, the Expediency Discernment Council approved the sixth note of single article in a series of changes in this form : "After divorce, upon request of the wife, claiming for the remuneration of the duties not ordered by the sharia'a, the court initially proceeds from the reconciliation (adjustment) to the provision of the wife's request, and if it is not possible to make a reconciliation (adjustment), if there is condition upon the financial affairs or an outsourced contract, it is acted upon. Otherwise, if the divorce is not at the request of a wife, and the divorce is not arising from a woman's violation of his spouse's duties or her malpractice and behavior, is as follows: (A) If the wife has done the things which is not responsible for religiously and the custom has prescribed fair equivalent remuneration for it and it has been done by the order of the husband and has not intentioned to donation, and it is also proved to the court, the court will calculate the fair equivalent remuneration for works done, and decides to pay it. (B) Unless otherwise stated in paragraph (A), and with respect to the common life years and the type of work done by the woman at the husband's house and husband's financial afford, the court shall determine an amount of money as forgiveness for the wife". According to the text of note 6 of

single article, the wife's eligibility for receiving fair equivalent remuneration was subject to the fulfillment of five conditions as follows:

1. The first condition is that the application for divorce is raised by the man (husband), and the reason its reason is not the woman's (wife) offender from wifehood duties or her malpractice and behavior. Therefore, if the application for divorce by man (husband) is to be followed by the issuance of a definite decree that the wife is obligated to give her consent or to order a sentence of her criminal conviction, the wife is not deserve to receive fair equivalent remuneration. Of course, the realization of fair equivalent remuneration being subject to such divorces was criticized by some of the lawyers from the same time. According to them, in the event of a divorce, on the woman's request for the fulfillment of the distress and constriction, the law should entitled her to receive the fair equivalent remuneration, for: "the distress and constriction Which comes from a man to a woman, makes her claim to divorce, and it is not logical for him to be deprived of the right to receive fair equivalent remuneration merely because of seeking divorce on the part of the woman"(Ahmadiyah, 2004: 305).
2. The second condition is that the court initially was not able to resolve the matter through compromise, and between couples, there is no condition for financial affairs during marriage contract or other necessary contract had been realized. Of course, some authors say: "The legislator at the top of the sixth note (paragraph), regardless of whether the divorce is at the request of a man (husband) or a woman (wife), determines the fees charged for the work performed by a wife outside the religious duty at the husband's house, and the court's duty to refine and the practice according to the terms of the contract. What the legislator has placed at the top of the sixth note of the title of the remuneration of women's works at the husband's house is nothing other than the fair equivalent remuneration mentioned in the section "A" of the same note (Ansaripour - Sadeghimoghaddam, 2006: 11). Indeed, in their opinion, the issuance of a judgment of belonging fair equivalent remuneration to wife is possible according to the compromise or practice of a stipulation financial condition in every divorce, even if it is at the request of a woman, and does not require a divorce application by a man (husband), which, of course, this opinion was not favored by other lawyers.

But the most important point about this note has always been, and given the obscure clause of Article 29 of the Family protection Act of 2012, the discussion of the issues surrounding it in the current situation can also be useful, the issue was related to the meaning of the term financial conditions, and in particular the dividing in halves (dividing properties into two equal

parts) condition mentioned in the marriage contract, whereby, in the event of divorce application by man (husband), and non-infringement of wife in the wifehood duties, the man (husband) must transfer half of the existing and gained at the time of marriage or its equivalent to wife for grant. Regarding the relationship between the fair equivalent remuneration and dividing in halves (dividing properties into two equal parts) condition (provision), there was always a difference between the lawyers and the judiciary, whether the wife could simultaneously demand the performance dividing in halves (dividing properties into two equal parts) condition (provision) and husband's obligation to pay the **fair equivalent remuneration** from the court, or that the dividing in halves (dividing properties into two equal parts) condition (provision), is the example of top of the sixth note, and its implementation is preventing the belonging of the fair equivalent remuneration to the wife?

Some lawyers believed that: "If there is stipulation of marriage contract between couples involves the necessity of dividing in halves (dividing properties into two equal parts) of the man (husband) at the moment of divorce from the property acquired during the common life, then only the same condition will be applied the turning point for the implementation of this note will not come (Movahedian, 2009: 74)⁶. This point of view is also dominant in the judicial process, and several examples can be mentioned, such as the theory of the majority of the judges of Legal Court of Shahrekord City at the Judicial Meeting of May 2004, which deals with the relation between the fair equivalent remuneration and dividing in halves (dividing properties into two equal parts) they expressed the following: "According to note 6 of the single article, which states that if there is a provision (condition) in the document of marriage about financial affairs, it should be act in accordance with it. Therefore, in this case, a woman can't claim the fair equivalent remuneration, if she demands fair equivalent remuneration, she has virtually ceased to exercise her right, and justice is required in the same way" (Deputy of Judicial Training Department, 2008: 498).

Another example is the opinion of the majority of the judges of Branch 22 of the Supreme Court of the Islamic Republic of Iran in Decree No. 148, dated 14/8/2002, and partly stated: "... Regarding the fair equivalent remuneration, also regarding the date of the occurrence of the marriage contract, and existence of a dividing in halves (dividing properties into two equal parts) condition in the man's (husband) property during contract, signed by both parties, is not a matter of claim to fair equivalent remuneration" (Ansari-pour - Sadeghimghdam, 2005: 13).

⁶ See also (Ansari-pour - Sadeghi Moghdam, 2006: 13) and (Saffar, 2011: 97).

However, some other lawyers believed that the term “provisions on financial affairs” in the wording of Note 6 was a condition for the fair equivalent remuneration, and that the implementation of the dividing in halves (dividing properties into two equal parts) condition does not preclude the belonging of fair equivalent remuneration to the wife (Kayani, 2006: 33). The example of the acceptance of this view can be found in the Commission’s theory at the above mentioned meeting of the Supreme Court, in which it states: “... In accordance with article 4 of the law on marriage adopted in 1931 and subsequent amendments, the parties of marriage contract can do any condition (provision) not opposed to contract during marriage contract. Including the fact that, in the case of separation (divorce), the man (husband) pays half the property that they have acquired after marriage to wife (woman), then this condition (stipulation) is indisputable and does not relate to the issue fair equivalent remuneration” (Deputy of Judicial Training Department, 2008: 498)⁷.

From these two perspectives, the first conviction was more correct because the legislature, when setting the sixth note of single article intended to state the conditions of fair equivalent remuneration for wife, and was clearly stated the term financial affairs at the top of the note. Therefore, this term also included the condition of the dividing in halves (dividing properties into two equal parts) and with implementation of such a condition it would not be possible to use the aforementioned fair equivalent remuneration in paragraph A. In particular, the philosophy of both regulations was one and their determination was to protect the rights of divorced and unfaithful women.

3. The wife’s works carried out on the order of the husband (man): Of course, it is obvious that the order is first of all a matter of demand and suggestion (Qorbannia and colleagues, 2005: 177 and Barikulo, 2011: 521 and Ahmadi, 2012: 49) and, secondly, the principle is the absence of an order and the wife must prove the order or request of the husband to do the affairs. Although With reference to the custom of family life in Iran, it can be inferred from the customary emergence of the existence of a command or request from a husband to do home affairs and because of the primacy of appearance on the principle, the husband (man) to be obliged to prove the work done by the wife willingly or voluntarily (Hedettia, 2005: 78).
4. The other condition was that the work performed was not one of the religious (Shari’a) duties of the wife (which was stated in the first sentence and does not need to be repeated).

⁷ See also the minority view of the judges issuing Decree No. 148 of Branch 22 of the Supreme Court, quoted by Ansari-pour-Sadeghi moghaddam, 2005: 13 and 14.

5. Finally wife should do things which demand (claim) fair equivalent remuneration for with no intention for donation. However, there was a significant difference between the lawyers and the judges regarding this condition and always the fundamental question is whether the wife should prove her intent to donate, or should the husband (man) prove the donation nature of the actions done by wife? In view of the ambiguity of the note following article 336, regarding the answer to this question, we will examine the issue in the third sentence.

The Status of the Fair Equivalent Remuneration for Wife in Current Law

Currently, in our country's (Iran) law, there are two legal provisions regarding the fair equivalent remuneration for wife, each of which must be examined separately. The first provision is an addition to Article 336 of the Civil Code, and the other is Article 29 of the Family Protection Law, which should be analyzed in this sentence, so that it can be inferred from its summation and clarify the existing ambiguities, hence the content of this sentence will be presented in two parts.

The analysis of the note of Article 336 of the Civil Code

One of the rules governing the fair equivalent remuneration for wife in Iran's law is the addition of the Expediency Discernment Council to Article 336 of the Civil Code, which should be considered in some respects as a legal analysis. However, before examining the provisions of the note and with the intention of approving certain events that have occurred during the course of its adoption, a brief content must be expressed regarding the manner of its adoption. First, we will first consider the historical analysis of the note and then its legal analysis.

Historical analysis of the Note to Article 336 of the Civil Code

In view of the criticisms raised in the sixth note of single article of 1992, in particular, in order to making exclusive the fair equivalent remuneration for wife to divorce, at the request of the husband, a number of parliamentary representatives tried to present a plan to lay the ground for the passing of the sentence contained in this note to the death of the husband. Consequently, a layout (plan) was proposed to add a note to Article 948 of the Civil Code (in the context of the heritage of the wife) to the parliament. The text of the note reads as follows: "A wife can, on demand, claim her life fair equivalent remuneration from deceased husband's heritage by attracting the opinion of the expert and in accordance with paragraph (a) of note (6) of the amended law on divorce, adopted 19/11/1972" (Naini, 1283 AH: 2007).

This note, which was drafted in support of women's rights, reviewed by the specialized committee was presented in a public hearing dated 3/2/2002, and its general contents were approved and after re-examination, finally, on 31/7/2003 it

was approved by the Islamic Consultative Assembly and was sent to the Guardian Council for approval. However, that council considered the parliament's bill unlawful and declared: "The use of the note of the single article in relation to the cases where the wife's work is ordered by the husband (man) without the intention of the wife to donate, but the order of the husband has the appear and clarity indicating being free, or the customary consider it free, is contrary to the rules of shari'a (Previous Source: 1297 AH). It is interesting to note that the arguments of members of the Guardian Council to reject this resolution are very similar to their view of the rejection of the parliamentary resolution in 1992, because in that year, note 6 Adopted by the Parliament on the basis of donation nature of the wife's acts (works) was considered unlawful. However, after commenting on the advice of the respectable council of the Guardians and in view of the insistence of the specialized commission in its previous opinion, this note was again voted on at the public hearing on 27/10/2002, and the parliament, citing the purpose of ratifying this layout (plan) is nothing more than the protection of women's rights after the death of her husband, and also the fact that the earlier regulation on divorce has been approved by the same law, insisted on its opinion and sent the resolution to the Expediency Discernment Council for examination. But after four years and two months, this assembly (Council) changed the resolution of parliament completely, and, while changing the provisions of the note, adopted it as an addendum to Article 336 of the Civil Code dated 13/1/2007 with the following text: "If the wife has done the things which is not responsible for religiously and the custom has prescribed fair equivalent remuneration for it and it has been done by the order of the husband and has not intentioned to donation, and it is also proved to the court, the court will calculate the fair equivalent remuneration for works done, and decides to pay it".

It is noteworthy that the above mentioned resolution calls for fair equivalent remuneration to be considered at any time possible and does not in any way provided it into divorce and allow the wife to address her living fair equivalent remuneration during the common life, while the parliament's intention to approve a note under Article 948 of the Civil Code was to protect women after the death of their spouses. Although some lawyers, even before the adoption of this note, believed that the right of wife to demand fair equivalent remuneration was not limited to divorce and, in other cases, she could, on the basis of general rules of receiving, also receive the fair equivalent remuneration of her actions from a husband (man) (Movahedian, 2008: 81).

Legal analysis Note of Article 336 of the Civil Code

In accordance with the text of the addendum to Article 336 of the Civil Code, a wife may, in the aggregate of four conditions, ask the husband's (man) obligation to pay a fair equivalent remuneration for a period of wifhood from the court: the first condition is that the wife demands remuneration of the works aren't her

responsibility or duty in accordance with shari'a. Of course, in this note, as in the article of the single Act of 1992, there is no such list of acts, which seems to be natural in view of the diversity of women's practices in life. The second condition is that the practice or practice of the subject of the demand of the wife, in the custom, have fair equivalent remuneration, and the habit of the community considers them have a financial value. The other condition is that the wife performs her actions with husband's orders or requests. It would seem, of course, proving a general request made at the beginning of life is sufficient in this regard.

But the fourth and most important condition of belonging fair equivalent remuneration to wife is that she has done her actions at the husband's house with no intention of donation, that is, the construction of the parties is that the wife receives wages for her actions at the husband's house. As mentioned above, there is a serious difference between judges and scholars of law about this condition, and it is always a matter of questioning who is responsible to prove donation or non-donation? Some scholars of law, in order to further facilitate the affair for a woman, have expressed the following view: "In the event of a difference between the husband and wife as to whether or not to donation-based act, in the absence of an evidence to prove it, due to the principle of non-donation, the wife's statement would be accepted and claimant of donation-based (free) act, that is, the husband (man), whose claim is contrary to the principle, must prove his claim" (Ansari-pour-Sadeghimohammad, 2006: 10)⁸.

But some other lawyers while stressing the non-donation principle believe in the existence of a customary circumstantial evidence on the donating nature of women's practices in Iran and, regarding this circumstantial evidence, place the burden of proving no intention of donation (contrary to circumstantial evidence) on wife (Imami Safaiy, 2006: 238 and Shirvī, 2016: 191 and Ghasmzadeh, 2011: 223). According to one of the leaders of this view: "The tradition of our families is that the service delivered by wife or mother is not an incentive except mercy and sacrifice, and speaking about fees for performing these ethical duties are unwise. On the basis of overcoming, it is assumed that the claimant has the same manner, unless it contradicts this customary appearance. Therefore, it is not enough to consider the husband as pretender, in any case, based on the "principle of non-donation", because the appearance is a circumstantial evidence and governs the actual principle (non- donation)" (Kathuzian, 2003: 291).

From these two points of view, the second theory is more correct and is more consistent with note Article 336 text, because in the text of the note, after mentioning the four conditions for the belonging fair equivalent remuneration to the wife, the statement reads: "... and to prove to the court. ...". The statement indicates that the lack of intention to donate must also be proved by the claimant in the same way as

⁸ See also: Roshan, 2011: 149 and Fazaeli - Mohammadi, 2011: 115, and Ghasmzadeh - Moradi, 2015: 308.

the other three conditions. In particular, the fact that the principle of non-donation and the necessity to prove donation by the ordered is expressly accepted in Article 336 itself, although there is no such statement in the note, the reason for this is very likely to be the customary appearance of the practice of women in families. Therefore, a wife will be entitled to fair equivalent remuneration if she proves to have done her actions in order to receive wages.

3.2. The Analysis of Article 29 of the Family Protection Act

The other provision in Iranian law regarding the fair equivalent remuneration of wife, is Article 29 of the Family Protection Law, adopted on 19/2/2013, which, along with the financial rights of the wife and the issues of custody, and... refer to determination of fair equivalent remuneration meanwhile the ruling related divorce. According to this article, "The court, by its own ruling, according to the terms and conditions of the marriage document (certificate), determines the Mahrieh, dowry and the alimony of the wife, children and carriage, as well as fair equivalent remuneration of wifehood days, according to the note of Article 336 of the Civil Code and decides on how to custody and keep children and how to pay for custody and maintenance. Divorce registration is a condition for paying the wife's financial entitlements. A divorce is recorded in the case of the consent of the wife or the issuance of a definitive ruling on the sentence of insolvency or installment of sentenced on. However, whenever a woman agrees to register a divorce without receiving the said rights, she may, after registering the divorce, to apply for these rights through the enforcement of judgments in accordance with the relevant regulations".

Regarding the matter referred to above, it is necessary to make a few points: first, the legislator, in Article 29, has referred to the determination of fair equivalent remuneration in addition to ruling related divorce, and the terms of the article indicate that the court's ruling in this regard, isn't required to file a petition and is done only on the request of the wife and its stipulation in the form of a meeting or a bill does not apply to the application of the wife and its constraint in the minutes or the bill, while the note (wording) of Article 336 of the Civil Code makes it possible to claim the fair equivalent remuneration at any time for a wife, and the use of such authority requires the filing of a petition and the payment of the costs of the proceedings. The main question now is: what is the scope of Article 29 of the Family Protection Act and in what kind of divorce wife can claim her fair equivalent remuneration without a petition? Unfortunately, the text of the article is ambiguous in this regard, but it seems that the phrase "d Divorce registration is a condition for paying the wife's financial entitlements". In the text of the article, there is an indication that indicates the meaning of the article from the word divorce, the divorce at the request of the husband (man) or behalf of him, because a wife who applied for divorce does not naturally register her divorce provided to receive her financial rights, therefore, if the divorce is to be asked by husband (man), the

claim for fair equivalent remuneration does not require the filing of a petition, but if the divorce is of a type of agreement one or because of distress and constriction, claiming this financial entitlement (right) will require a petition.

Another point that it seems necessary to consider is that Article 29 of the Family Protection Law has once again required the wife to receive the fair equivalent remuneration to the fulfillment of the four conditions laid down in Article 336 of the Civil Code, but unfortunately, the article not only has no word about the relationship between fair equivalent remuneration and the condition of dividing in halves (dividing properties into two equal parts), even has added to the ambiguity in this field. Because in the sixth note of amending the rules on divorce, adopted in 1992, the primacy-recency issue of the law and the financial terms of the contract was clear, and according to the explicit mention of the note, the implementation of the financial condition was preceded by the implementation of clause (A) in relation to fair equivalent remuneration, but in the context of Article 29 of family protection act, although referred to in the terms of the contract, but its primacy-recency regarding determination of fair equivalent remuneration is not clear in accordance with the note (wording) of Article 336 of the Civil Code, and it is not even clear whether the interpretation of the terms of the contract is related to the discussion fair equivalent remuneration or not, while the only ambiguity of the former law was the inclusion or non-inclusion of the condition of financial affairs on the condition of dividing in halves (dividing properties into two equal parts). Therefore, there is currently a kind of dissent in the judicial process, and the judges do not have a single opinion about whether they can be issued simultaneously with the verdict of fair equivalent remuneration and dividing in halves (dividing properties into two equal parts). Some lawyers, of course, believe that: "Today, the legal basis for the exercise of fair equivalent remuneration for wife is the note (wording) of Article 336 of the Civil Code, not the sixth note (wording) of single article of the divorce law, adopted in 1992, so if the court's ruling on divorce is due to woman's misconduct, or there is a stipulation on financial affairs, the wife still has the right to receive fair equivalent remuneration for her own work at the husband's home. With this explanation and interpretation, the claim of fair equivalent remuneration despite the existence of a stipulation of dividing in halves (dividing properties into two equal parts), is possible, that is, a woman can claim fair equivalent remuneration and if the conditions of the condition are provided, she can also claim half the property of her husband (Lotfi, 2, 2010: 196 and 197 - Dayyani, 2008: 282). This idea can be correct in our current law in our country (Iran), although, given the presence of the condition of dividing in halves (dividing properties into two equal parts) in all marriage contracts, it was better the legislator was more concerned with the subject, and setting an explicit article, resolve the ambiguity of the relationship between the condition of dividing in halves (dividing properties into two equal parts) and fair equivalent remuneration.

CONCLUSION

In the previous lines and pages, the concept of the fair equivalent remuneration of the wife's act was investigated and it was said that, fair equivalent remuneration is compensation of works that are not among the religious duties of a woman. Then, the historical background of the wife's fair equivalent remuneration in Iran's law and the current rules of our country (Iran) in this regard were analyzed in different ways. As a result of the study, it can be stated that according to the civil code standards of Iran, a wife can at any time filing a petition claim fair equivalent remuneration of actions that are not religiously attributable to him and in the custom are entitled to remuneration, provided that she proves that she has carried out the acts in accordance with the order of the husband (man) without the intention of donating, unless the husband (man) is an applicant for divorce. In this case, the wife without the need for a petition can demand both fair equivalent remuneration and the fulfillment of the condition of dividing in halves (dividing properties into two equal parts). It seems that Article 29 of the Family Protection Act does not have the necessary clarity and transparency and it is better to make corrections. Also, with regard to the relationship between the fair equivalent remuneration and the condition of dividing in halves (dividing properties into two equal parts), both of which are aimed at supporting women, especially divorced women, it is better to amend the law in such a way that the demand of fair equivalent remuneration be limited to cases of divorce and death of the husband, and in the current situation of the society, a step is taken to strengthen the foundation of the family, or at least by an unambiguous provision, the optional implementation of one of two entities (fair equivalent remuneration and the condition of dividing in halves (dividing properties into two equal parts) should be emphasized.

References

- Ahmadi, Abbas, (2012). Matrimony donation and fair equivalent remuneration of the wife by reviewing the latest legal changes, AndishehAsr Publication, First Edition, Tehran.
- Ahmadiyah, Maryam, (2004). "The Right of fair equivalent remuneration and Matrimony donation in a Legal Study", Journal of Women's Book, No. 25.
- Ansari-pour, Mohammad Ali - Sadegh-moghaddam, Mohammad Hassan, (2005). "The fair equivalent remuneration of wife's actions and Criticism of Court Opinions in this Field", Quarterly Journal of Humanities, Special Issue of Law.
- Barikloo, Alireza, (2011). "Legal Principles for Supporting the Income of Matrimonial Days of Divorced Wife", Journal of Family Studies, Year 7, Number 28.
- Charles Weintraub and Kurt Schuler, (2015). Indias Paper Currency Department (1862-1935) as a Quasi Currency Board, *Indian Journal of Economics and Business*, (2015), ISSN: 0972-5784.
- Christine Arthur and Roger Clark. Determinants of Domestic Violence: A Cross-National Study, *International Journal of Sociology of the Family*, ISSN: 0973-2039.

- David Wästerfors. Doing Normalcy: Attractive Interactions for Teenage Boys with Disabilities, *International Journal of Sociological Research*, ISSN: 0974-8393.
- Dayyani, Abdul Rasul, (2008). Family Law, First Edition, Tehran, Mizan Publication.
- Dehkhoda, Ali Akbar, (2014). Dictionary, 1, First edition of the new era, Tehran, Tehran Publishing and Printing Institute.
- Deputy of Judicial Training Department, Judicial Meeting, Civil Legal Matters, (2008). First Edition, Tehran, Javedaneh Publication.
- Evelyn Devadason. Nature of Intra-industry Trade and Labour Adjustments: Is the SAH Relevant for Malaysia?, *Indian Development Review*, ISSN: 0972-9437.
- Fazaeli, Mostafa-Mohammadi, Olia, (2011). "The condition of the right to receive fair equivalent remuneration of wife in Iranian law and its criticism", *Shiite Women's Journal*, No. 8, No. 8.
- Feyz, Alireza, (1999). Islamic jurisprudence and principles, Ninth edition, Tehran, Tehran University Press.
- Ghasmzadeh, Atekeh - Moradi, Khadijeh, (2015). "The fair equivalent remuneration of wife in Islamic Law and jurisprudence in the light of the Law on Family Protection 2012", *Journal of Islamic jurisprudence and the foundations of Islamic law*, year 48, No. 2.
- Ghasmzadeh, Seyyed Morteza, (2011). Civil Requirements and Liability - No Contract, 9th Edition, Tehran, Mizan Publication.
- Ghorbannia, Nasser et al., (2005). Women's Law Research, New day Publication, First Edition, Volume II, Tehran.
- Hedaytenia, Farajalah, (2005). Wages and salaries of the wife, fair equivalent remuneration, matrimony donation and moderation of the Mahrieh, first edition, Qom, Islamic Center of Science and Culture.
- Imami, Asadollah - Safai, Seyyed Hossein, (2006). Brief Family Law, 10th Edition, Tehran, Mizan Publication.
- Jafari Langroudi, Mohammad Jafar, (2009). Terminology of Law, Twenty-Second Edition, Tehran, GanjDanesh.
- Jeffrey S. Wilkinson & August E. Grant, (2009). Comparing Chinese and American Media Systems Journalism, Technology, and Change, *International Journal of Cross-Cultural Studies*.
- Katoozian, Nasser, (2003). Foundation for Civil Code - Family, Third Edition, Tehran, Mizan Publication.
- Katouzian, Nasser, (2005). Civil code provisions - Legal Events, Eighth Edition, Tehran, Public Joint Stock Company.
- Kiani, Babak, (2006). "The fair equivalent remuneration and the condition of dividing in halves (dividing properties into two equal parts) of property in the couple's financial issues", *Isfahan's Lawyers' Office*, No. 1.
- Lotfi, Assadullah, (2010). Family Law, Volume II, First edition, Tehran, Khorsandi Publication.
- Moein, Mohammad, (1992). Farsi (Persian) Dictionary, Vol. 1, 8th Edition, Tehran, Amir Kabir Publications.
- Movahedian, Gholamreza, (2009). Law and Financial Relations of Couples, Third Edition, Tehran, Cultural Institute of Publishing.
- Naini, Ahmad Reza, (2007). Detailed Civil Law Negotiations, Office of Legal Studies, Research Center of the Islamic Consultative Assembly, First Edition, Tehran.

- Narendar V. Rao & Lateef A.M. Syed, (2017). Use of Sukuk in Project Financing, *The Global Journal of Finance and Economics*, (2017), ISSN: 0972-9496.
- Obaid S. AlMotairy and Ahmed M. AlSalman, (2012). Institutional Aspects and the Implementation of International Financial Reporting Standards in Saudi Arabia, *Global Review of Business and Economic Research*, (2012), ISSN: 0973-127X.
- Roshan, Mohammad, (2011). Family Law, First Edition, Tehran, Forest Publication, Javedaneh.
- Roshan, Mohammad-Mohammadi, Hassan-Mehrpour, Hossein, (2012). Wife's Requirements and Method of Acquiring it, First Edition, Tehran, Forest Publication, Javedaneh.
- Saffar, Mohammad Jawad, (2011). Lessons from family law, based on the legal status of a woman in marriage and divorce, First edition, Tehran, Forest Publication, Javedaneh.
- Samarendra Saraf. Human Rights: Some Reflections on their March from Vox Naturalis to Vox Inter-nationes, *South Asian Anthropologist*, ISSN: 0257-7348.
- Shirvay, Abdolhossein, (2016). Family Law (marriage, divorce, children), first edition, Tehran, Samt Publication.
- Stan C. Weeber. Introduction to the Special Issue, *International Review of Modern Sociology*, ISSN: 0973-2047.
- Suruchi Tewari & Vijoy S. Sahay. Child Health Seeking Behaviour Among the Slum Dwellers of Allahabad City: A Comparative Gendered Analysis, *Journal of Social Anthropology*, ISSN: 0973-3582.
- Varsha Sreevatsa & Romate.J. Is There a Relationship between Child Rights Awareness and Peer Relations?, *International Review of Comparative Sociology*, ISSN: 0975-1149.