Rights and Obligations of Spouses in I.R. Iran's Law in Comparison with R. Armenia's

Gholam Reza Shirazi
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Grigor Bekmezyan¹, Gholam Reza Shirazi²

Abstract

The goal of this study is to achieve an answer to what the regulated reciprocal rights and duties of spouses in family institution based on legislations of Iran and Armenia is. The library-analytical method is the basis for this research. In legislation of both countries the mutual love and respect, the mutual assistance and responsibility are the basis to make up a family and self-willed interference into family issues is not allowed. According to R. Armenia's legislation property obtained by spouses during marital life is in their joint ownership unless a contract between them establishes otherwise, but in IR. Iran's the aforementioned property is in the ownership of husband unless otherwise provided. In IR. Iran although provision of maintenance costs is the husbands' responsibility; wives in many cases work outside the house and help to provide maintenance.

key words and expressions: marriage contract, dowry, spouses, alimony, rights and obligations

Introduction

According to the social history of mankind, human has to adjust to the rules and regulations in order to coexist. Diversity of cultures, rituals and customs is resulted in diversity of structures and frameworks in which conventions fall. Family is the smallest social unit with minimum members of wife and husband. This institution is the oldest and most important social group the notion of which, has not been the same during the history of mankind and it has followed social transformations. It is in a firm connection to culture. Ruth Benedict believes that most behavioral features of families are in harmony with the social culture and civilization [1, p. 22].

With admittance of the fact that each regulation in legislation must meet a social necessity, and with due attention to the point that behavior in family is the most private aspect of life and to enter this basic social unit law meet difficulties; the study attempt to analyze enforceable rules and regulations stipulated for spouses in current codes of I.R. Iran and R. Armenia. It is a library-analytical study based on related Codes, books and other written materials. Firstly the related articles in Iran's Codes will be discussed and in second part the Codes of Armenia will be dealt with.

¹. Doctor of Law, Associate Professor in Yerevan State University, Guide Professor.
². Doctor of Law candidate in Yerevan State University, Correspondent Author, (Shirazi.llb@gmail.com)
A. Spouses' Rights and duties in Iran's law

A permanent marriage is a social contract and its consequences are not limited to the parties. Not only the children’s future depends on the stability and continuing of family, but also public order necessitates this institution to be safe and stable. Because of this significant importance, legislators has taken the husband – wife relations out of their scope of power undertaking the duty of family order [2, p.135].

This legal institution can only be dissolved if the law permits to do so. Even in the case of mutual consent to dissolve it, court should refer the case to family consulting centers. Parties to the contract can start from consulting centers and in case they still want to divorce, the centers should refer the case back to the court for final verdict, and this is where the certificate of the impossibility of compromise is issued (Articles 25 and 26 family support bill). Cancellation option is invalid to marriage and because illegal condition does not invalidate the contract, without a shadow of doubt, the contract is valid. This issue has been elucidated in the beginning of Article 1069 civil Code "A provision in the marriage contract reserving the right of cancellation of the contract, if made, will be null and void."

As the marriage was concluded in a due manner, there are rights and duties both for husband and wife that jurists call them “the consequences of marriage”. Article 1102 of Iranian civil code states that: "As soon as, marriage takes place in due form, relations of matrimony will automatically exist between the marriage parties and rights and reciprocal duties of husband and wife will be established between them."

Matrimonial relation in its absolute senses has a very extensive meaning which comprises all personal non-financial and financial relations between parties. Since marriage, firstly is a non-financial contract, in other words, non-financial relations are more important, we will discuss non-financial relations first, then financial ones.

I. Non-financial Relations of Spouses

Family manners, social conventions and behaviors, have ordained certain reciprocal duties for husband and wife which in turn, classify their rights. In couples personal relations some duties are common and some specified to one party being husband or wife. First, we will study common duties and then those specified to one party.

a. Communal Duties of Spouses

These duties are those that both parties are bound to meet and fulfill.
1- Friendly association

Friendly association is one of the spouses' communal obligations. This has been emphasized in Article 1103 of civic code: "The husband and wife are bound to treat each other as good companions". The partnership of husband and wife means that their relations should be cordial, friendly and amicable. Spouses' friendly association or good behavior is related to social conventions and customs and its requirements change in accordance with time and place. In short, we can say all the behaviors that are socially offending for example, swearing, assaulting, arguing and humiliating or affairs that are in opposition with family affection and the requirements of love between spouses e.g. family abandonment, ignoring partner or his/her wishes, developing bad habits are instances of bad association in family.[ibid. pp. 219-220].

Shared life is a requirement for good association so husband is bound to accept wife in his home and wife is bound to live in man’s house. Having sexual intercourse in due manner conventionally is another requirement for good association and whenever husband or wife refrains from doing so s/he has gone against good association.

The legal department of Judiciary in the announcement No: 7977/7 dated; 18/February/2007 declared that as per Article 1103 civil code, husband and wife are bound to have good association and therefore maltreatment or mistreatment of wife must be directed to her husband that can be considered as condition fulfilling the aforementioned provision in marriage contract. However, if wife's mistreating others is so acute that disturbs the husband’s life and court can consider that being directed towards husband, it can be regarded as instances of harsh treatment.

Although the duties relating to friendly association are ethical, legally also they are not without guarantee to be established. Wife's bad association eliminates the right to receive alimony. As it is mentioned in article 1108 civil code “if a wife refuses to fulfill her duties as a wife without legitimate reason, she will lose her entitlement to receive maintenance.

When husband's bad association is so acute that makes the life unbearable for wife, with reference to paragraph 4 of note to article 1130, she can refer to the court and apply for divorce. The code declares “beating or any ongoing harsh treatment that customarily considering wife’s situation is unbearable, is an instance of difficult and undesirable condition.

In verdicts from Supreme Court, argument and ill treatment, assaulting and beating have been considered as instances of bad association [3,pp. 81-82].
2- Cooperation in Family Welfare and Education of Children

Article 1104 Iranian civil code required the cooperation and collaboration of spouses in 2 cases
1. Family welfare 2. Education of children. The article stipulates that “husband and wife must cooperate with each other for the welfare of their family and the education of their children.

Husband and wife should cooperate with each other to run the family, in illness and in distress help and sympathize each other. What helps the welfare of a family is not confined to marriage but it is required that husband and wife do not refrain from any actions which strengthen the family. The important legal consequence from this fact that imposes duty on husband and wife is that none of them has the right to ask for remunerations for the services s/he provides for family and help offers to his/her wife/husband [2, p.220].

The non-cooperation of wife in this regard can be an instance of disobedience and can nullify the right of maintenance and husband's non-cooperation is an instance of difficulty and undesirable situation that can be a cause to court divorce verdict.

Another common and important duty is children education that are the fruits of their life. Law has emphasized the couple cooperation for education of children. If husband or wife educates their children as they wish, it will cause discordance and duality. This is turn, in addition to causing numerous problems, disturbs the children education and their abusing the circumstances. In such families children are the primary victims of this disharmony in education.

3- Loyalty

In Iranian law this matter has not been dealt with explicitly, perhaps the lawmaker did not deal with this matter as it is very obvious. Faithfulness can be considered one of the instances of friendly association or fortifying family ties. Husband and wife being unfaithful to each other is betrayal and in addition to being disgraceful, it is criminal.

In French law man and woman are not equal in this respect. A wife who betrays her husband is always violator of the law and she is sentenced to prison but man's punishment never exceeds compensation and this is when a man is in sexual relation with another woman regularly in couples shared dwelling, it means he accommodates the woman as mistress in his dwelling.

In Iranian law there is no difference between man and woman in this regard, in “Islamic Criminal Law” the punishment for a married woman or married man who commits adultery may be as severe as capital punishment. Wife or husband committing adultery is a public crime and the very same fact clearly demonstrates the significance of faithfulness and its relation with public order.
Whenever husband falls into the habit of adultery can be an instance of bad association and can be a ground for applying to court for divorce. Marrying another woman observing the due rules is not in contrast with faithfulness as defined here.

b. Allocated rights and obligations of spouses

As it was mentioned earlier, some rights and duties are specific to husband or wife. We will discuss these thereinafter under “husband's directorship on the family and wife's obedience.

1- Directorship of the Family

Establishing order in each community is conditioned to someone governing it. Family, which is the smallest social unit, is not an exception to this rule and its survival and stability is impossible but through choosing a leader. Regarding wife's individual rights, equality of man and woman is reasonably justified. Majority of woman and sometimes men claim that the family should be run jointly and its being governed should be based on mutual agreement. But, it goes without saying, that social obligation imposes restrictions on individual freedom. If man and woman's authority over regulating family affairs is the same, how should differences be resolved? Maybe, in some families woman is more competent than man, but law governs the majority.

In countries where families are the bases of society, lawmaker have tried to keep the families sound and stable by providing impediments for divorce and assigning authorities to solve the problems. As can be seen in countries such as Switzerland, Italy and many other countries that families are managed by men and there are impediments to some extent for dissolving it.

Family, on its own, is not left without manager, and the authority of the manager depends on various factors that law is the least influential one. Whoever is the manager of the family cannot exceed the limits determined by conventions, customs and factor governing it although the law may have authorized him. Exceeding these limits is the beginning of disagreement, argument and instability of the family[ibid, pp. 221-225].

In French law as per the code in 1970 management of the family is not the husband's responsibility and financial and spiritual management is delegated to couples jointly[4,p.125].

Article 1105 Iranian civil code reads: “In relations between husband and wife; the position of the head of the family is exclusive right of husband. From articles 1104 and 1105 collectively it can be concluded that in family welfare and children education wife is husband’s helper and assistant.
The Concept of Husband's Directorship on the Family

Maybe in past it was believed that man is the dictator in a family and supporter of incapacitated people called wife and children. Nevertheless, nowadays, man's leadership is fully a social obligation rather than exercising individual rights. The lawmaker's goal was not to privilege man comparing with woman or to gratify his desire. It was rather burdening him with responsibility. Leadership is a responsibility laid upon him not a right that he exercises and wife is exempted from this responsibility comparing with husband.

By leadership we mean ultimate decision making in family affairs and serving their interests that some have been specified by lawmaker e.g. allotting dwelling, controlling woman choice of work etc. are in man's scope of powers. Other cases that are not specified by lawmaker will be defined according to customs, conventions and common sense[5, p.287].

Man's leading the family means sound and just management. Justice is a lofty, ethical concept. So, if leadership doesn't diverge from governing and reigning, it will go against justice and would be absolutely unethical and disgraceful. It is better for family that this management is delegated to man and it does not means assertion, self-centeredness, domination, and discrimination that one can say equality concept of the parties in family associations is not observed. Actually it is serving and leading this small (at the same time basic) unit, in other words it is the same sound and democratic leadership[6, p: 85].

For instance, husband cannot prevent wife from fairly visiting her relatives and friends. It should be noted that canonization of the right to leadership is to achieve ultimate social rights that family for regulating its inner- relation does not experience crisis. Thus, the right of heading a family should serve the paramount and vital interest of family and its members. Sharia (Islamic Jurisprudence) supports this right as far as it doesn't result in the harm of family members. If due to family leader's incompetency or his imprudence or his intention to harm, family members suffer damage it is an instance of exercising right out of scope of powers because the leader has abused its power.

I.R .Iran's Constitution in this regard in Article 40 explicitly declares:" No one may inflict loss on another or violate public interests by means of exercise his rights. "

Since the position of the head of the family is given to man to protect and safeguard family interests, he may not give his right to woman according to a contract or his unilateral will, because the directorship of man leading a family in its present sense is related to public order[7, P. 184].
1-2-The Consequence of Husband's directorship on Family

The position of the head of the family is the exclusive right of husband and it has consequence including:
- Wife can use husband's family name with his consent.
- Wife must comply with him.
- Allotting dwelling is basically husband's right.
- Husband can prevent his wife from choosing a job that is against family interests or the job which is below her dignity.
- Legal guardianship of children is the exclusive right of father.
- The alimony of the family is father's responsibility.

1-2-1- Compliance

Obedience also like the position of heading of the family depends on customs, conventions, traditions and ethics in society. Obedience in Iranian law has 2 different meaning: general and specific. General obedience means accepting man’s position of the head of the family, respecting his management about children education, financial and ethical management in scope of law and custom with the view to safeguarding family interests. Specific obedience is fulfilling man’s legal sexual needs. In other words specific obedience means woman accepting to have sexual relation with man and accedes to her husband's sexual request customarily and in case where there is no acceptable excuse.

Husband also is bound to have sexual relation with his wife to customary extent. In all these cases final judgment is based on conventions and ethics. Therefore specific obedience does not mean ignoring woman's emotions.

The criterion of obedience is the behavior of a conventional person living in that special situation which in this case has two aspects; typical and personal. In obedience woman's be readiness is important. About this specific duty of woman, there is no effective legal guarantee, and its fulfillment depends on the partners' good-will and temperament. A wife who does not obey her husband is not entitled to maintenance and man can divorce her with the permission of court, but with decree of court and police force no one can oblige a woman to obey and to have good temper.
Obedience can be considered as an instance of friendly relations. Being good-tempered in family is an ethical guideline and it helps to meet their needs in different aspect. In contrast, harsh treatment takes away peacefulness.

Emergence of ethics and its being blended with family law and regulations actually is a guarantee for its implementation and the family components with these ethical laws and duties can contributes to strengthening family bonds. To make this happen, in the family in comparison with other fortifying factors including beauty, health, social titles and education, ethics plays a pivotal role[6, pp. 69-70].

1-2-2-Alloting Dwelling house

In this regard Article 1114 civil code states: "the wife must stay in dwelling that the husband allots for her unless such a right is reserved to the wife." The mentioned article providing the right of allotting dwelling place is the exclusive right of husband. This, in turn, can be one of the consequences of husband holding the position of heading the family and the wife will have the right to choose the dwelling house only if this right explicitly is reserved to her. This right may in marriage contract or in a different contract or in a separate contract be granted to the woman. If this is an absolute right, in addition to choosing the city it is enforceable for choosing the house as well.

Supreme Court in verdict no 776 on the issue states: if it is stipulated in marriage certificate that the wife has absolute right to allot dwelling house for 30 years the condition includes to specify house, and it is not possible to confine her right to choosing the city so that her staying in her paternal home and not going to her husband's, results in disobedience. In another verdict No. 176 Division 8 declares, if according to marriage certificate the right to allot dwelling place is granted to wife the action considering obedience which means the wife returning to the dwelling that she allotted is null and void. Of course wife must not abuse this right or intended to harm or bother her husband otherwise in that case with reference to “abuse of rights" it can be followed through the court.

Since the right to allot dwelling is the exclusive right of husband, to prevent him from probable abusing of this right law permits the wife to choose a separate dwelling. Article 1115 civil code provides: "if the co-existence of the wife and husband in the same house involves the risk of physical injury, financial loss or injury to the wife's dignity, she may choose to live in a separate dwelling. If the alleged risk is proved, the court will not order her to return to the matrimonial house and, so long as she is authorized to remain in a separate home, her husband will be liable for her alimony."

Verdict No. 366 Issued division 6 of Supreme Court in this regard says: article 1115 civil code has granted the right to woman that in case of physical injury, financial loss or injury to the dignity of wife,
she can choose another house different from that of her husband’s, this is not a case of disobedience. Therefore, as the wife rightly fears the injuries, which are normally unbearable, she can leave husband's house. Avoiding injuries is a general principle and it also governs family relations, and none of them wife, husband, children is allowed to put others in difficulties and undesirable conditions.

1-2-3-Opposing to Wife’s Occupation

Woman’s freedom is somehow limited after marriage. Fulfilling conjugal duties prevents wife from liberally choosing a legal occupation as a single woman does. Based on article 1117 civil code the husband can prevent his wife from occupation or technical work which is incompatible with the family interests or the dignity of himself or his wife. Lawmaker’s aim was to safeguard family interests and spouses’ dignity. There are affairs that go against family interest and weaken family bases or disturb children rearing and education or destroy spouses' social dignity or disarray family economic system. There are no strict guidelines to determine them, because family interests or spouses' social dignity depends on specific conditions of each family.

Maybe an occupation with the same characteristics does not jeopardize the family interests of a specific family but for another family it does so. Family interests depending on time, place and family conditions differ. All the occupations-done out of house-more or less prevent the woman to fulfill some of wife or maternal duties.

The aim to provide article 1117 civil code also was the same therein occupational challenges does not impede the wife to run the house and to educate children. Husband as the head of family - the individual in charge of protecting this institution - can prevent her from choosing a job that threatens family interests. Therefore, husband right-subject in the article—is not exclusive and it is conditioned by family interests and his or her wife interests.

Prior to enactment of Family Support Bill, there was disagreement about the issue whether determining family interests is man’s right ,as the result of which, he-as the head of family-can prevent the wife from choosing every occupation that he considers against the spouses’ interests or not. Should wife prove the abuse of this right or husband like other claimants should refer to court and after proving his claim ask the court to make a verdict about it ? From the wording of articles 1105 and 1117 it can be inferred that it is not required for the husband to provide evidence and, he-as the head of family can authoritatively determines family interests, so it is the wife who should prove the opposite.
Article 15 Family Support Act -1967- has provided on this: the husband, with the approval of the court can prevent his wife from choosing an occupation which is against family interests or the wife’s dignity. Then, in current Iranian legal system, husband should initiate an action as a claimant in the court, and after proving wife’s occupations being against family interests and his or wife’s dignity, ask the court to prevent her.

Guardianship is an exception to this general principle. In this case, husband’s consent is required and proving its being against family interests is not required. As it is mentioned in Article 1233 "A woman cannot accept guardianship without, the consent of her husband." Theoretically we can say accepting guardianship is not a job and the aforementioned article has not allocated the mandate in article 18 Family Support Act on this matter about approval necessary of the court. It goes without saying, that accepting guardianship sometimes necessitates managing the incapable person’s properties and doing business and handling affairs that is a full-time and lucrative job. Therefore husband’s consent actually, in this case is occupational limitation for wife and it is a consequence of husband heading the family.

It should be added that husband’s right is not only enforced for the occupations that wife has after marriage but it can be enforced for the occupations prior to the marriage. Hence, if a man marries a woman who is a flight attendant and then realizing that her continuing this job threatens the family interests, he has the right to ask the court to prevent her. Husband’s consent does not curtail his right because preventing the woman is not man’s exclusive right that one can claim because he has given his consent he has waived his right. The retention of this right is that of public order domain and exercising it, is the duties and responsibilities of husband in managing the family [2, pp. 234-235].

In Family Support Act-1967- only men could appeal to the court to prevent women from choosing certain occupations while, the chance that man’s job was a threat to family’s interests and his or his wife’s dignity was ignored. It was against the principle of men and women's equality of rights. Some Islamic scholars believe that men and women’s equality of rights is the most important criterion declaring that exception is against the principle and it is circumscribed to certain or consensus cases [8, p. 187].

In Family Support Act 1974 wife was entitled with the right that whenever she considers her husband’s job against family interests and her or his husband’s dignity apply to the court to prevent
him. It has been added to the end of Article 18 that “if family livelihood is not jeopardized, court will prevent husband from that certain occupation.

Therefore, theoretically one cannot consider the right of preventing his wife from choosing occupations that are against family interests as a consequence of the husband heading. The family avoiding such occupations and respecting partner’s dignity is among mutual duties and violating it entitles other party to refer the case to court to force the violator observing the rule.

The culture in our society still has not eliminated the conventional division of task. If lunch is not ready or the laundry is not done wife is the person at fault, as when the ends are not met this is the man rather than woman at fault. The necessities for friendly association makes women help more inside home and encourage the man to be active out of home.

II. Spouses Financial Relations

1- Spouses Financial Independence Principle

Prior to 20th century in European law system, wife was not financially independent from her husband and after marriage she was one of the incapacitated. Since late 19th century laws in countries were amended and in most countries wives were financially independent. Still, in the law system of most of these countries husband and wives according to law or mutual consent decide to be financially partners, and that is why regulating their financial relations is not easily possible [2.p 137].

In Iranian law system husband and wife properties do not make common property, but the property of each party is separated from the other party. Husband and wife sharing principle of inner facilities will entail free will resulting to enjoy freedom of thought and will which is the same as authority. Therefore wife can in all aspects of her life-personal and social, with exception of cases for which there are impediments act independently[9, p. 274].

Article 1118 civil code on the issue declares “the wife can independently do what she likes with her property.” This is an advanced idea that in some civilized and developed countries woman could achieve such right after years of resistance. The woman's payment also is considered her property and she does not have to share it with her husband gratuitously, unless the job which according to conventions and customs and regarding friendly relation or contribution is considered her duty. So she cannot demand remuneration for that. Laws (Iranian Laws) is not gender-based regarding ownership[10, p.47].

Wife can demand remuneration for what she does for her husband at his orders. Of course if the woman intends to do something gratuitously, she is not entitled to the right of remuneration.
At the beginning of Article 29 Family Support Bill it is stated that in divorce, in addition to the verdict and considering conditions stipulated in marriage contract, court must decide about dowry, marriage portion, wife’s alimony and pay parity for marital period according to note to Article 336 civil code. Wife’s pay parity is the sum for the work she did at her husband order cannot be confined to divorce. It is a general principle which can be applied to other situations as well. To confirm this idea, one can refer to Article 336 civil code which declares: "If a person carries out an act on the order of another and a wage is payable for such an act according to custom and usage, or if the person carrying out the act is accustomed and available to undertake such work, then he may claim payment for his work, unless it can be shown that he has acted gratis. This principle is called "Exploitation" which includes wife’s working at her husband’s home as well.

Lawmaker also has noted the recent point and added a note to Article 336 in 13, 1, 2007 as follow: "If the wife carries out acts which according to Sharia are not her duties and there is payment for them according to custom and usage, at the order of her husband and she intended to do them non-gratuitously and this is proved for the court, the court will calculate the pay for those acts and will order to be paid."

As we saw, in husband-wife financial relations, the issue of common property that in some countries is acceptable does not come up here[10, p.134]. Nevertheless, husband-wife financial relations may be considered in 2 cases including: marriage portion, alimony.

1- Marriage portion
In pre-Islam era financial relations governed the marriage contract, marriage portion is an example. Islam also has emphasized this fact and has made firm recommendation on its not being excessive. However, specifying its amount was delegated to parties based on considering facts such as husband’s ability, wife’s dignity, conventions and customs of different people. Marriage portion is the sum that husband, according to marriage contract, undertakes the duty to pay to wife. The obligation imposed for the payment of marriage portion is rooted in law and is not based on contract. Therefore, silence of both parties while concluding marriage contract or even agreeing on the wife not being entitled to receive marriage portion does not violate husband’s duty in this regard. Article 1087 civil code states "if a dowry is not mentioned marriage contract or if the non-payment of marriage portion is stipulated as a condition in permanent marriage, that marriage will be valid and parties may subsequently agree a dowry by mutual consent. If intercourse between the married
couple has already taken place before such a mutual agreement, the wife is then entitled to receive the amount of dowry normally due."

As it was mentioned earlier, although the conditions in marriage contract may be based on mutual consent, the occurrence of their consequences is out of spouses’ power. As husband and wife accept marriage contract they are in a condition under which they have to face its unavoidable consequences. Thus, marriage portion is a legal obligation imposed on man and parties while concluding marriage contract or after it specify marriage portion on mutual consent. Article 1080 civil code related to this issue states: "fixing the amount of marriage portion depends upon the mutual consent of the marrying parties". The legal department of judiciary in an announcement No: 7/414 dated 2/April/2008 declared the increased marriage portion after concluding marriage contract is not dowry and it is not governed by civil code, practically it is debt undertaken by husband.

Obliging wife to obey her husband is directly resulted from law and it must not be attributed to husband and wife consent. Therefore the relation between marriage portion and obedience cannot be compared with compensatory financial relations. Human ethical character distinguishes him from creatures and entities in the world. Human is always entitled to a right or obliged to observe it but will never be the subject of right.

Wife is never the compensation for marriage portion. She concludes a contract with her husband whose inevitable consequence obliges the husband to pay the marriage portion and the wife undertake the duty to obey him. That is why, cancellation of marriage portion does not nullify the marriage contract and does not exempt her from fulfilling her duties [2, p.139]. Article 1081 emphasized that "If a condition is set in the marriage contract that the marriage portion must be paid within a fixed period of time or that marriage will be annulled, the marriage contract and the agreed dowry will remain valid but the condition will be null and void."

- The Lien of wife

It is mentioned that there is not causative relation between marriage portion and marriage and one may not compare marriage contract with other compensated contracts. Nevertheless, article 1085 of civil code in certain cases has enforced laws on compensated contracts to marriage contract. As per this article "so long as marriage portion is not delivered to her, the wife can refuse to fulfill the duties thereto she has undertaken toward her husband, if the marriage portion is payable at once. This refusal does not debar her from right of maintenance". This right is known as "The Lien of Wife". Since, one of the wife’s duty to her husband is living in his dwelling, wife can refuse to go to her
husband’s dwelling. Notwithstanding the fact that wife’s duties towards her husband is not legally related to oblige the husband to pay the marriage portion in custom it governs the whole matrimonial life. Having said that, according to article 1086 it seems that the lawmaker aimed at specific obedience. The article reads: “If the wife voluntarily proceeds to fulfill the duties that she undertakes toward her husband, she cannot subsequently avail herself of the provisions of foregoing article, but she will not in any case forfeit her right to demand payment of the dowry due to her”.

Even the installment of dowry does not forfeit the right of the lien of wife. Verdict of unified procedure no 708, dated 12\Aug\2009 in approval of this declares that additionally on the establishment of husband indigent, he can pay that in installment. According to article 1085 which mention the dowry as a whole sum being fixed upon mutual consent, the issuance of verdict of installment which is only due to husband indigent and constriction, does not nullify the right of lien of wife and also does not violate her right and does not eliminate her governing of will unless with the consent of aforesaid woman, because, firstly the right of lien of wife and indigent are two separate entities which one does not affect other. Secondly marriage portion in foregoing article meant the reception of the whole and collection of one or some installment(s) does not mean the reception of marriage portion as wife intended while concluding marriage contract. The right of lien is abolished under two circumstances there under husband can demand his wife to fulfill her matrimonial duties prior to the payment of marriage portion: firstly, when certain time has been specified for the payment of marriage portion, in this case wife agrees to collect marriage portion after a while. Matrimonial relations start from the time of concluding marriage contract and each party must fulfill his/her duties. This judgment is mentioned in the late part of the article 1085. Secondly, if wife obeys at her free will, following that, she cannot exercise the right of lien.

2- Provision of Family Expenses

According to article 1106 of civil code the cost of maintenance of the wife in permanent marriages is the responsibility of the husband. Notwithstanding the fact that lawmaker has bind the husband to provide the alimony of the family because of being the head of the family, the spouses should cooperate to manage the family affairs. This duty arises from obligatory law, so conditions contrary to it does not violate the duty.

Article 1107 of civil code realizes the maintenance costs of wife including all her ordinary needs proportionate to woman’s circumstances declaring cost of maintenance includes accommodation, clothing, food and furniture appropriate to the situation of the wife on a reasonable basis and
provision of servant if the wife is accustomed to have servants or if she needs one owing to illness or disability, are husband's responsibility.

In the cost of maintenance as inferred from aforementioned article, wife's situation and need in customary manner is the criterion in practice not husband's financial circumstances. Therefore if wife is from an opulent family husband is bound to provide necessities for life in proportion to familial and social situations and status.

Considering wife or husband situation as criteria to specify the quality and quantity of cost of maintenance is contrary to justice and fairness. Because if a rich man married a woman from a poor family he must not always humiliate her and pay the cost of maintenance parsimoniously or vice versa[11, p.127].

Husband due to cost of maintenance and observing ethical principles should meet all the ordinary needs of his wife. This order is here to exempt wife from obligatory and boring tasks and she does not have to shoulder the financial responsibility of the family and, only suffer the unbearable burden of pregnancy which is her inherent responsibility from God. It is her husband's ethical duty to support her financially and spiritually[6, p.71].

Cost of maintenance in comparison with her blood relatives has the peculiarities and advantages as follow:

If there are a wife and one or more relatives who are to be supported the claim to support of the wife precedes that of others (Article1203). The wife can always and in any case apply a claim for her past expenses, and her right to these expenses are preferential, but relatives entitled to provision on maintenance expenses can claim only their expenses for a future period (Article1206).

Wife cost of maintenance is not conditioned by man's poverty or opulence. Wife even being rich can demand cost of maintenance from her husband. If the husband refuses to pay the cost of maintenance of his wife, and if it is impossible to enforce the verdict of the court to induce him to pay the alimony, the wife can refer to the judge and apply for divorce and the judge will compel the husband to divorce her (article 1129). However, the cost of maintenance for relatives, the poverty of one party and opulence of the other is the condition.

Wife's cost of maintenance is not a reciprocal duty- it is an individual duty- In Iranian legal system wife is never bound to pay the cost of maintenance to her husband while relatives cost of maintenance is a reciprocal duty(Article 1201).
Wife’s duties for cost of maintenance is a preferential claim and in case of husband bankruptcy or death and inadequacy of properties to pay all the debts, it is preferred to other debts, while cost of maintenance for other relatives with the exception to that of children is not of same nature[4, p.138].

- *The Wife’s Alimony Guaranty*

It was mentioned that husband’s obligation for payment of the maintenance costs is the resultant of an obligatory principle not agreement. This duty for husband has civil and criminal guarantees. As per Article 1111 of civic code, a wife may make a claim to the court if her husband refuses to provide maintenance costs. In such cases the court will set the amount of maintenance costs and induces the husband to pay it. Now, if the husband refuses to execute the court verdict or execution of such a verdict is impossible due to inaccessibility of husband’s property or his incapability to do so, the wife is entitled to the right of divorce and the judge compels the husband to divorce his wife (Article 1129).

For making a claim to the court for the maintenance cost, just proving the marriage contract suffices on behalf of the wife to be entitled to the alimony. Therefore, if husband claims the wife’s disobedience which abolishes the right of maintenance costs, he must prove the issue. The Supreme Court also in verdict No 2612-1316 declares that the proof of marital relation is enough to claim for the maintenance costs.

If a husband, contrary to his financial ability and wife’s obedience, does not pay the maintenance costs to his wife and wife sues for it, the husband will be punished with imprisonment for the term of 6 months to 2 years.

B. *Spouses’ Rights and Duties in Republic of Armenia*

According to Article 1 of the Family Code in Republic of Armenia’s Law, this institution (family) is under protection of society and state; and family’s rights are the result of necessity of family consolidation. Foundation of family relationships is based on the mutual love and respect, cooperation and mutual responsibility of all family members, and any self-willed interference is inadmissible. Its regulations are based on the realization of family members’ rights and necessity of juridical protection of these rights. Third Provision of Article 1 claims that man and woman should enjoy equal rights at the moment of marriage conclusion, during the marital life, and in case of marriage cancellation. Provision 4 of the same Article has emphasized that legal regulation of family relations is realized in accordance with the principles of free will of a man’s and woman’s marital union, the equality of spouses’ rights in family, solution of family issues by mutual consent, taking
care about mutual well-being, primary provision of the rights and best interests of minor and incapable family members. This Article conforms to Article 16 of "The Convention on Eradicating any Inequality Against Women" that has been passed by UN in 1979.

If the relations between family members are not regulated by family legislation or the parties' consent, and there are no norms directly regulating the mentioned relations, the norms of family and/or civic law regulating the mentioned relations (if they do not contradict their essence) are applicable with regard to such relations (Law analogy). In case of impossibility of law analogy, family members’ rights and duties are established proceeding from the family principles or civic rights (Rights analogy) (Article 5).

According to the first paragraph of article 24, spouses are free in choosing occupation, job, profession and residence. The second clause of the same Article stipulate that the spouses deal with the issues of maternity, paternity, rearing and education of a child, as well as other issues of family life proceeding from the principle of equality of spouses' rights.

In third clause of the above mentioned article couples have been obliged to build their relations on the basis of mutual cooperation and respect, contribute to the firmness of family, and take care about the well-being and bringing their children up. This article conforms to article 1104 of Civic Code in Iran.

Issues related to common shared property of spouses are regulated by of Civic Code as well as the marriage contract concluded between them (article 26). Spouses’ rights and obligations during the marital life and at the time of dissolution are specified by marriage contract that is set based on the spouses’ agreement or consent (art. 27).

According to Article 29, by concluding marriage contract spouses can change the scope of common property in order to establish common, shared, or private property towards all the property of the spouses'. Marriage contract may be concluded on present assets and what will be obtained in the future. Through the marriage contact they may establish mutual rights and obligations of meeting each other's living expenses, ways of participation in each other's income, and how to provide family expenditures by each one. Meanwhile, they specify any mutual obligation at the time of divorce and also specify any possible criterion in financial relations in this contract. Rights and obligations stipulated by marriage contract can be restricted for a certain period or depend on emergence of certain circumstances or vice versa.
Property gotten by spouses during marital life is in their joint ownership unless a contract between them establishes otherwise. Property that belonged to each of the spouses before entry into marriage, as well as, property acquired by one of the spouses during marriage by gift or by way of inheritance is in this spouse's ownership. Property for individual use (clothing, etc.) with the exception of jewelry and other items of luxury, although acquired during marital life at the expense of the general assets of the spouses, shall be recognized as owned by the spouse that use them. The property of each of the spouses may be recognized as their joint ownership if it is established that during marriage, at the expense of common property of them or personal property of the other spouse investments were made that significantly increased the value of this property. This rule shall not be applied if a contract between them provides otherwise. For obligations of one of the spouses, execution may be levied on property that is in his/her ownership, as well as, on his/her ownership share in common property of the spouses (Article 201 of Civic Code).

According to third Provision of Article 29 of Family Code, there are occasions in which spouses are not allowed to make an agreement on:

- Depriving of the right of applying to the court by each one
- Nonfinancial relations between couples
- Couples' rights and duties in relation to children
- Limiting the rights of incapable spouse about demanding the living means
- Other regulations which create unfavorable conditions for each one of the spouses
- Any agreement that contradict the major principles of family legislation

The conditions that are in contrast to the conditions stated in Provision 3, article 29 are invalid. Article 30 stipulates the revision in content or revocation of marriage contract as: with the spouses consent the marriage contract can be alternated or cancelled at any time. Marriage contract is alternated and cancelled by the procedure established for the conclusion of it. Unilateral refusal of marriage contract is forbidden. With the requirement of one of the spouses marriage contract may be alternated or revoked by judicial procedure under the basis and procedure established by Civic Code for alteration and cancellation of treaties. The validity of terms specified in the marriage contract expires with marriage cancellation, except for the obligations that are stipulated for the period after the marriage revocation.

Based on the regulations of invalidity of transactions in Civil Code, the court can recognize marriage contract invalid partly or completely. Additionally, if the conditions stated in the marriage contract
specify severely unfavorable conditions for each one of the couples, court can revoke a part or the whole of marriage contract if the objecting spouse claim.

Conclusion
In IR. Iran's law, family is an institution with certain frame in which the rights and responsibilities of its members has been defined and determined. Agreement against some of these conditions is null and void without having effect on the contract. Some conditions are so essential that agreement against them make the marriage contract null and void. In the aforementioned law husband is the head of the family and family is recognized in his name. Providing living means is husband's duty, maybe because of this responsibility, in consultation with the other family members, he make the final decision about family affairs. Abuse of heading right by husband is prohibited. Nowadays despite the fact that wives generally work outside and help husbands provide living means for the family; legally they are never responsible for even when being rich. This is a sign of mutual assistance that is customary but not in accordance with law. So amendment is necessary to recognize the property acquired during marital life in common ownership. In Iran's law independency of property ownership has been stipulated, each spouse's property gotten before marriage is in his/her ownership and those which acquired after marriage as well, unless otherwise provided.

In R. Armenia's law family is set up on the basis of mutual love, respect and assistance but habitually provision of family earning is the responsibility of man. Spouses may agree on all their property regardless of being acquired before or after marriage. There is no hindrance about this issue in Iran's law. In the latter legal system it is the principle that property gotten by spouses during marriage is in their joint ownership unless a contract between them establishes otherwise. Properties acquired by one of the spouses during marital life by gift or by way of inheritance is in this spouse's ownership.
References: