

Comparative Study of Family Members' Rights and Duties in Zoroastrianism and Islam¹

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Abstract

Family is the foundation of social life and the cornerstone of the society. After marriage and family formation, each of the members, including the parents and children, is going to have special rights and duties towards one another. In Zoroastrianism after legal and official marriage, known as pādixšāyihā, family members acquire certain rights. This type of marriage is much like permanent marriage in Islam, in which family members have certain rights and duties too. Conducting a comparative study, this article surveys the rights and duties of family members from the perspective of both Zoroastrianism and Islam, showing that there are many similarities between these two religions that might be an indication of the continuity between their traditions.

Keywords: Family Members' Rights, Family Members, Zoroastrianism, Islam, Islamic Jurisprudence, Law.

¹ In temporal terms, the present paper covers until 7th Century AH (Anno Hegirae), i.e. from 622 AD to 1300 AD. To be more precise, Islamic jurisprudence books until 7th Century AH/13th Century AD have been used in this research.

Introduction

Family is the oldest and most important human group whose members include the wife, husband, and the children in their custody. In both Zoroastrianism and Islam father/husband is the master of the family, being responsible to protect and take care of his wife and children. The other members also have some duties and responsibilities to one another. An outstanding feature of Zoroastrian social system in Sassanid Era (224-651 AD) was patriarchal family. The father was regarded as the master of the family, being supported by the wife or the mistress of the house. The family members were usually had a family link with each another relatively or causally such as marriage or adoption.²

Also in Islam, the man is the master of the family and the woman and the small children are under his protection and in his custody. In this religion, once a marriage contract is signed legally, each of the parties will have some rights and responsibilities towards one another.

Legal marriage in Zoroastrianism guarantees certain rights for family members, and is known as *pādxšāyihā*. Therefore, *pādxšāyihā* is the legal contract between man and woman. In this type of marriage, the family members are called with a *pādxšāyihā* suffix: *šōy ī pādxšāyihā*, *zan ī pādxšāyihā*, *pus ī pādxšāyihā*, and *duxt ī pādxšāyihā*. For this marriage, the satisfaction of the father or *sālār*³ and the bride is needed.⁴ If the mentioned condition is not present, *pādxšāyihā* marriage will not be signed. The *pādxšāyihā* is very much similar to permanent marriage in Islam; and the rights and duties, defined in this marriage for the couple and their children, have a counterpart in permanent marriage. In permanent marriage the satisfaction of the patron and the daughter; however, in Islam, the jurists have two differing views in relation to these conditions. Some Muslim jurists regard the satisfaction of the patron and daughter as the validating condition of the contract while others consider it a recommended issue.⁵

1. Mutual Rights and Duties of Family Members in Zoroastrianism and Islam

After marriage, family members have various rights and duties towards one another. Since the woman is under guardianship of the husband, she has to be obedient and submissive (*Framān-burtārīh*) to him. Any violation of this duty by the woman was considered a sin and the husband could demand his rights.⁶ Accordingly, the *zan ī pādxšāyihā* had to obey her husband, which has been much emphasized in Zoroastrian texts, e.g. with regards to this it has been mentioned that women do not need worshipping the God, but their worship is that they should stand before their husbands three times a day, asking him “What do you want me think, say, and do?” If with this the man got satisfied of the woman, the God would be

² Shaki, 1999.

³ The term *sālār* means guardian. In *pādxšāyihā* marriage, the husband is the guardian of the wife as well as the children. If he passes away while there is a wife and a small child in the father, a guardian or supervisor will be appointed. In terms of priority, there are three types of guardians: the natural guardian (*sālār-būdag*), the established guardian (*sālār-kardag*), and the appointed guardian (*sālār-gomardag*). If there is a mature son in the family, he will succeed his father, after the latter's death, his guardianship being the *sālār-būdag*. If during his life, the father of the family, appoints a guardian for his family, his guardianship is the *sālār-kardag*. In case of no *sālār-būdag* or *sālār-kardag*, a person will be selected by the priests and rulers as the *sālār-gomardag* (*Revāyat-e Emid-e Ašavaheštān*, 5: 2-7).

⁴ Mazdapur, 1990: 109; Shaki, 1999.

⁵ See Sheykh Tusi, 1986: 251-250; Mohaqeq Helli, 1968: 443; Ibn Rushd, 1978: 4.

⁶ Perikhanian, 1983: 647.

satisfied of him as well; however, if the man was dissatisfied of the woman, her soul would be punished in hell.⁷ *Ardā Wirāz-Nāmag* talks about the position of women who either obey or disobey their husband and *sālār* as well as the latter's punishments.⁸

Additionally, obedience and respect of father and mother is the child's first duty. The *pādxšāy*-child is also supposed to stand before his parents, telling them "What do you want me think, say, and do?"⁹ It has been said that when the parents are dissatisfied of their child, there will be some effects of this dissatisfaction of the parents in the child's life.¹⁰ Even a father could deprive a son, with whom he is unhappy, of the inheritance.¹¹ And if a son answers his father, disobeying him, he will become *marg-arzān*¹², his killing becoming obligatory in the faith. Also *Ardā Wirāz-Nāmag* speaks about the punishment of those who have annoyed their parents in the world and have not asked forgiveness from them.¹³

In an existing sample marriage contract, known as *paymān ī zanīh*, the couple have some responsibilities towards one another, which chiefly include moral obligations. At the time of signing, the bridegroom guaranteed that he would behave towards the bride in accordance with her status, accepting the bride as the *kadag-bānūg* (mistress) of the house.¹⁴ In return, the bride promises to keep her contract with the bride as long as she is alive, to accept the task of supplying an inheritor and successor in case of the man's need for one, to practice obedience and submission towards the bride, to show respect to him, and never to turn away from being an Iranian and good religion (*weh-dēnīh*)¹⁵.¹⁶

*ud im wah <mān awiš> be padīrift ēdōn
kū <wahnān ēn-iz> padīrift kū zīndag
dra<(h)nāy az zanīh ud> ayōgānīh ud
framānbur<dārīh ud tarsāgāh>
warzīdārīh andar im <wahnān az ērīh
ud weh- dēnīh be nē war> dom.*

The bridegroom accepted her from him (= the father of the bride) in this (manner) that (= the bride) also (should) accept the following: " As long as I live I shall not deviate from the marriage (with the bridegroom) and (this) intermediary succession (*ayōgānīh*) and (from) submissiveness and obedience toward so-and- so (= the bridegroom) and (from) being an Iranian (*ērīh*) and (practies) the Good Religion".¹⁷

⁷ See *Saddar Nasr*, 59: 1-5; *Saddar Bundahesh*, 69: 1-4; Shaki, 1971: 339; idem, 1999.

⁸ See Chap. 13 and Chap. 82.

⁹ *Saddar Nasr*, 40: 5-6; Mazaheri, 1998: 197.

¹⁰ See *Sad dar Bundahishn*, 69: 5-11.

¹¹ See *Dārāb Hormazyār's Rivāyat*, 173; Dhabhar, 1932: 179.

¹² i.e. death-worthy; It is a degree of sin the punishment of which is death and is enacted for those, committing a deadly sin(see Reza'ei Baghbidi, 2007: 205).

¹³ See Chap. 65.

¹⁴ See *paymān ī zanīh*; *Pahlavi Texts*, ed. Jamasp-Asana, paragraph 6; MacKenzie, 1969: 106; Perikhanian, 1983: 647; Yakubovich, 2005; Macuch, 2007: 191.

¹⁵ The religion, founded by Zoroaster, was known with different titles. He, himself, had called it *weh-dēnīh*, which means good religion (Yasna 53. 1, 4; Stausberg, 2002: 10). In this article it is used for a follower of Zoroastrianism.

¹⁶ See *paymān ī zanīh*; *Pahlavi Texts*, ed. Jamasp-Asana: paragraph 5; MacKenzie, 1969: 106; Yakubovich, 2005; Macuch, 2007: 190-191.

¹⁷ Macuch, 2007: 190-191.

There are some important points in this paragraph: 1) the intermediary succession task (*ayōgānīh*) of the woman towards the husband; 2) her practice of obedience towards him; and 3) not returning from good religion and being Iranian. Nevertheless, researchers have varied opinions regarding the term *ērīh*. Macuch translates *ērīh* as Iranian, also deducing that it is connected with *weh-dēnīh* and being a follower of the good religion, thus a synonym of Iranian.¹⁸ Yakubovich accepts Macuch's opinion¹⁹, yet MacKenzie interprets *ērīh* as honorable conduct.²⁰

Moreover, when signing the contract the bridegroom promised to accept the children from this *pādixšāy*-bride as *pādixšāy*-children.²¹ Yet, otherwise was possible as well, illustrated by an example in *Ardā Wirāz-Nāmag* where a man's soul, due to not accepting his child in the world, is suffering punishment.²² Furthermore, it has been said that if a father announces his rejection of the child three times, becomes *marg-arzān*.²³

Also in Islam the husband and wife enjoy some rights, having some duties towards one another. Due to her wifely responsibilities, the woman should obey her husband as it has come in miscellaneous sayings that if a woman sleeps while her husband is truthfully unhappy with her for something, her prayers are not accepted by God.²⁴ Yet, in accordance with this religion, one should not think that woman's submissiveness of man indicates the latter's superiority, for based on the creation system, man and woman have no superiority over one another and God has created both of them from a single breath. God has said:

"يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً؛"

"O mankind! Reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women."²⁵

Another duty of the couple to one another is good companionship. Accordingly, God has said: "عَاشِرُوهُنَّ بِالْمَعْرُوفِ" "Live with them on a footing of kindness and equity".²⁶ Also, in religious traditions it has been brought that the best of the believers are those who behave well towards their wives.²⁷ Moreover, well treatment of the husband by the woman in Islam is equal to jihad.²⁸ In a story of the Prophet, it has been mentioned that if prostrating to other than God was allowed, the woman would be commanded to prostrate to her husband,²⁹ which can indicate the moral aspect of good companionship.

The children, as members of the family, have some duties too. One of the duties of children towards their parents is to show them respect, which is so important in Islam that Koran has

¹⁸ Macuch, 2007: 196.

¹⁹ Yakubovich, 2005.

²⁰ MacKenzie, 1969: 106.

²¹ See *paymān ī zanīh*; *Pahlavi Texts*, ed. Jamasp-Asana: paragraph 6; MacKenzie, 1969: 106; Perikhanian, 1983: 647; Yakubovich, 2005; Macuch, 2007: 191.

²² See chap. 42 & 43.

²³ See *Revayat-e Pahlavi*, 33: 6.

²⁴ See Sheikh Saduq, 1989: 86.

²⁵ Koran, 4: 1.

²⁶ Koran, 4: 11.

²⁷ Termezi, 1996: 454.

²⁸ Koleyani, 1986: 507; Sheikh Saduq, 1989: 86.

²⁹ Koleyani, 1986: 508; Sheikh Saduq, 1989: 85; Termezi, 1996: 453; Beyhaqi, 2003: 475.

emphasized respect to parents after worshipping God.³⁰ God has also cautioned the children about saying the smallest irritating words to father and mother, which is known as “fie” (أَفِّ), recommending them not to bother them at all and behave with them with respect and *ikram*.³¹ In this religion, the God’s happiness of the children depends of the parents’ happiness and God has also commanded the children to be thankful of the parents.³² The parents are also responsible to nurture the children, the most important principle of which is to improve the children’s faith. In Koran, the impact of nurturing the children has been described as the following: “And those who believe and whose offspring follow them in Faith, to them shall We join their offspring, and We shall not decrease the reward of their deeds in anything.”³³

Additionally, in Islam, the father is obliged to accept his child.³⁴ But if the father rejects the child, claiming that he has been born by adultery, and there is no way to prove that, the rejection should happen by oath of condemnation in which case the child is rejected from the father but belongs to the mother.³⁵

2. Guardianship of the Man over the Family in Zoroastrianism and Islam

Once *pādxšāy*-marriage happens with the girl *sālār*’s (i.e. guardian’s) assent, the guardianship of the girl is transferred to the bridegroom’s father and if the father is dead to the bridegroom, himself. In time of marriage, the daughter is accepted as child of the bridegroom’s family, becoming a member of that family. Hence she goes under the guardianship of the *Dūdag-sālār* of the family (the guardian of the family), getting attached to the *Dūdag* (lineage) of her husband’s family. Thus she receives the right of inheriting some properties of her own husband.³⁶ Accordingly, the husband is regarded as the guardian of the *pādxšāy*-wife as long as she is alive. Additionally, father is the guardian of the son until his puberty and the daughter until marriage.³⁷ The father can even appoint the guardianship of his immature child to a person temporally and retake it whenever he wants.³⁸ What is more, if the father was excessively poor, endangered, and ill, he could cease being the patron of his wife and was authorized to sell his son as a slave.³⁹

As for Islam, based on the teachings of this religion though both man and wife has several rights in relation to one another, neither could violate the other’s rights and while they could do their own duties and responsibilities, they were not allowed to violate these. Nonetheless family, a small society by itself, has a master and guardian, a title given to the man.⁴⁰ Concerning this, Koran says: الرَّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ “Men are guardians of women”.⁴¹ It is also mentioned: لِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ “Men are superior and better than women”.⁴² In both of these verses, the aim is not to show the superiority of man over woman, but to indicate the

³⁰ 6: 151.

³¹ Koran, 17: 23.

³² See Koran, 31: 14.

³³ Koran, 52: 21.

³⁴ Sheykh Tusi, 1964: 515.

³⁵ See Mohaqeq Helli, 1968: 950; Beyhaqi, 2003: 671.

³⁶ *paymān ī zanīh; Pahlavi Texts*, ed. Jamasp-Asana: paragraph 2; Mazdapur, 1990: 72; Mazaheri, 1998: 73; MacKenzie, 1969: 105; Perikhanian, 1983: 646; Yakubovich, 2005; Macuch, 2007: 190 & 195.

³⁷ *MHD*: 32, 12-14.

³⁸ See *Revayat AzarFarnbagh*: 30; *MHD*: 28, 9-11; *AFS*: 30.

³⁹ *MHD*: 33, 13-17; Shaki, 1971: 337; Idem, 1999.

⁴⁰ Mohaqeq Damad, 2011: 287.

⁴¹ 4: 34.

⁴² Koran, 2: 228.

responsibility the man has in relation with family affairs, since according to the creation system there is no superiority between man and woman and God has created both from a single breath.⁴³ It should be mentioned that in Islam, as long as the father is alive he has the guardianship over his small children and in case of his death, a guardian is appointed for them.⁴⁴

3. *Xwārišn ud Dārišn* or Alimony in Zoroastrianism and Islam

Based on Zoroastrianism, in *pādixšāy*-marriage, the man should pay the costs of food and clothing of *pādixšāy*-wife and *pādixšāy*-children.⁴⁵ The costs of the son until his puberty and the daughter until her marriage is upon the father, yet the living costs of the *pādixšāy*-wife is on the man as long as she is alive. If a man has no property to pay the alimony of his family members with, it will be paid from the properties of the mature son.⁴⁶ In fact based on this religion, each man has to pay the living costs of the *pādixšāy*-wife, subordinate to him, and cannot evade this responsibility. Also the man is allowed to transfer some properties to the woman, subordinate to him; however, this does not involve immovable properties.⁴⁷ Even if the *pādixšāy*-husband dies, the living costs of this woman is provided from her husband's possessions and whatever worthy of this woman should be given to her.⁴⁸ The way and the form of her welfare reflect the social status of the family. The wife of a rich man cannot be clad in rags. Also the wife of a poor man cannot claim for splendor and jewelry, unless in the marriage contract a fixed amount is mentioned for the woman's private use.⁴⁹

In case, the father neglected to pay the costs of living and nurturing the child, despite being financially capable, and another person took up the task, this person could provide the child's costs from the child's income, itself, or in absence of such income, from the father's properties.⁵⁰

Moslem Jurists have a consensus that paying the alimony is a right of the woman, upon the man, and the latter should provide the clothing and food of his wife and children. Based on the following verse from Koran: “وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ” “It is the duty of the father to provide for them and clothe them in a proper manner”.⁵¹ Apart from the wife, the alimony of relatives is obligatory, though it becomes so when the man can pay the alimony of his own family. There are two conditions of the obligation of alimony in Islam: 1) the permanency of the marriage and 2) complete obedience of the wife. There are differing views on this issue that alimony becomes obligatory just after marriage contract or obedience. Most jurists regard the obligation condition of alimony as complete obedience,⁵² yet in terms of fourfold aspects: 1) time of alimony's obligation, 2) the amount of alimony, 3) the person to whom alimony should be paid, and 4) the person to pay it, there are differing views among the

⁴³ See Koran, 4: 1.

⁴⁴ Mohaqqueq Helli, 1968: 387.

⁴⁵ See *paymān ī zanīh*; *Pahlavi Texts*, ed. Jamasp-Asana: paragraph 6; Bartholomae, 1958: 53; Perikhanian, 1983: 647; Yakubovich, 2005; Macuch, 2007: 191.

⁴⁶ *MHD*: 32, 12-14; Shaki, 1971: 338; Idem, 1999.

⁴⁷ *MHD*: 33, 9-11.

⁴⁸ *Revāyat-e Emid-e Ašavaheštān*, 7: 9.

⁴⁹ Hjerrild, 2003: 117.

⁵⁰ Mazaheri, 1998: 195; *MHD*: 33, 3-6.

⁵¹ 2: 233.

⁵² Mohaqqueq Helli, 1968: 715.

jurists.⁵³ The time of alimony's obligation Malek considers the time when the man has sexual intercourse with the woman, the latter having the status of intercourse and the former being mature. Yet according to Shafi'i and Abu Hanifa when the woman is mature, the immature man should pay the alimony, though in case of mature man and immature woman, Shafi'i's opinion is like Malek. However for *nashezeh* (disobedient) women (see the following section for this term's meaning) and bondwoman, there are varying ideas. Based on most jurists' view, alimony to a *nashezeh* woman is not obligatory while an infrequent statement affirms the payment of alimony to *nashezeh* woman.⁵⁴ Based on,⁵⁵ “وَمَنْ قَدِرَ عَلَيْهِ رِزْقُهُ فَلْيَنْفِقْ مِمَّا آتَاهُ اللَّهُ” “he whose resources are restricted shall spend according to what God has given him”. Man should pay the woman's alimony. In case of failing to do so, divorce happens between them.⁵⁶

The alimony of the child is also obligatory for the father. One can conclude the obligation of paying alimony to the child, based on verses of Koran.⁵⁷ In the absence of father or in case of his poverty, the paternal grandfather is obliged to pay the alimony of his grandchild, and in case of the absence of both, the mother has to pay the alimony of her children.⁵⁸

4. Disobedience or *Nashuz* in Zoroastrianism and Islam

In Zoroastrianism the term *atarsagāhīh* (disobedience, *nashezeh*) is used for a woman who acts against her husband's orders. More precisely, the husband bans the woman from doing something and orders her to do something else, yet the woman acts vice versa. If the woman does so three times, she is called *atarsagāh*.⁵⁹ However, the sin of woman's disobedience had to be officially confirmed by the court's sentence since in case of proof and affirmation, it had executorial guarantee hence its correctness should have been proven. The woman also had the right to turn to the court for proving her innocence,⁶⁰ as accusation of the woman for disobedience by the husband might have been to seize her properties. Accordingly, the woman could sue in the court and by proving the incorrectness of her husband's accusation, reclaim her own properties.⁶¹

Based on Zoroastrianism when the woman is disobedient to her husband and not lie with him, the husband was allowed to brand her as punishment. But when the woman committed a sin against the country, the husband was not allowed to punish her.⁶² In fact the mentioned article can be deduced that the husband did not have the right to punish the woman, though in case of her disobedience this right existed for the man to punish the disobedient woman physically. Based on these explanations, it can be deduced that the issue of woman's disobedience was more important than sin against the country.

In addition, even the properties given to the woman by the man, could be returned to the latter in case of proving her disobedience and even in case of the husband's death, the

⁵³ Ibn Rushd, 1978: 53-54.

⁵⁴ Ibn Rushd, 1978: 54.

⁵⁵ Koran, 65: 7.

⁵⁶ Sheykh Saduq, 1989: 89; Beyhaqi, 2003: 773-774.

⁵⁷ See 2: 232; 65: 6.

⁵⁸ See Mohaqqueq Helli, 1968: 741; Ibn Qudama, 1968: 212.

⁵⁹ *MHDA*: 5, 6-8.

⁶⁰ Perikhanian, 1983: 648.

⁶¹ Bartholomae, 1958: 63.

⁶² *MHD*: 98, 5-6.

atarsagāh woman inherited nothing from the husband.⁶³ Accordingly, it has been said that the husband is allowed not to give any bread (provision) and alimony to *atarsagāh* woman and no sin will be for the man in this case.⁶⁴

In Islam, the woman who disobeys her husband and does not accomplish her wifely duties (not allowing sexual intercourse), has no good behavior, has done unfitting actions, and is regarded *nashezeh*. Her husband can deny wifely rights from her. The most renowned jurists consider woman's going out without the husband's permission or her lack of cooperation with her husband when moving to the dwelling he has prepared as examples of *nashuz*.⁶⁵ To be *nashezeh* is not limited to the woman; if the man neglects doing his own duties such as paying alimony or bothers and harms the woman without any reason, he too will be *nashezeh*. All jurists agree that *nashezeh* woman has no alimony, yet in their opinions vary in the definition of the *nashuz* which ceases alimony. Abu Hanifa considers a woman obedient so long as she does leave the house without her husband's permission, even though she has avoided lying with him; thus he does not regard her alimony ceased, on these terms. Yet other jurists include the woman's refusal of doing matrimonial duties without any logical or legal barriers as examples of her disobedience.⁶⁶

Furthermore, the man is allowed to punish his disobedient wife: At first he should advise her and if she does not become obedient of him, he should stay away from her in bed and if this does not succeed as well, the man is allowed to physically punish the woman. If she becomes obedient, he should not continue his procedure.⁶⁷ The referred verse, in fact, states the examples of woman's *nashuz* (disobedience) as well as the way to force her do her own duties. Also, *nashuz* might happen on the man's part as well. In this case, if the woman doubts that her husband is adverse to her and is turning away from her, it is better that she forgets some of her own rights and establishes peace and agreement between themselves.⁶⁸

5. Financial Relations of Husband and Wife in Zoroastrianism and Islam

In *pādxšāy*-marriage, everything the woman brought to her husband's family as dowry or inheritance belonged to the woman. If such properties were used in a work that had profits, in case of divorce this profit did not belong to the woman;⁶⁹ only the main property was given to her. But if in time of marriage, the property transfer was mentioned in written form, in time of divorce the property belonged to the woman in accordance with the contract. If there were no such contract, the properties belonging to the woman was returned to the husband's family.⁷⁰ In fact, the husband had a general right over all the properties the woman gained during life and the woman's property was considered a part of the family's property. Since, the woman was regarded as a member of the family, she shared the economic circumstances of the family, unless in accordance with the initial marriage document, a specific article or paragraph was added in relation to this contract.⁷¹

⁶³ See *Revayat-e Pahlavi*, 33: 1-3.

⁶⁴ See *Dārāb Hormazyār's Rivāyat*, 189-190.

⁶⁵ Ibn Qudama, 1968: 236; Sheykh Saduq, 1989: 87.

⁶⁶ See Moghniyeh, 2007: 283-284; Ibn Qudama, 1968: 236; Sheykh Tusi, 1964: 483.

⁶⁷ See Koran, 4: 34.

⁶⁸ Koran, 4: 128; Beyhaqi, 2003: 485.

⁶⁹ *MHD*: 4, 11-13.

⁷⁰ *Revāyat-e Emid-e Ašavaheštān*, 7: 8.

⁷¹ Perikhanian, 1983: 647-648; Hjerrild, 2003: 117.

It should be said that Paragraph 7 of *paymān ī zanīh*, related to the financial relations, the man accepts some responsibilities as the following: 1) He should transfer the profit from the income to the woman. 2) He guarantees 3000 dirham as *kābēn*, dowry. 3) He joins his wife in half of the properties in his own hands or will gain in future. And 4) In case of request, he hands over the share.

"If the property was of the same kind, (then) the bridegroom gave to the bride full right of disposal of the income. And then they agreed by contract (*az paymān*) (on the following): the bridegroom (agrees to) the (amount) which has been approved of by the bride (and) sanctioned (by her), (namely) 3000 silver drachms in domestic currency: "As a substitute for 3000 silver drachms in domestic currency". From all the property that has come into (my) possession and ownership, which I am entitled to give, and also of (the property) which from now on shall come into my possession and ownership, that I am entitled to give, If the bride make a request or (another) person forward a claim for a portion, I shall deliver it to her unspoil and obstinate over it".⁷²

Therefore, woman has the authority to transfer properties, shared by the husband, to the third party; however, based on a paragraph from *Mādayān ī Hazār Dādestān* there are two contradictory viewpoints for getting permission from the husband when transferring the property to the third party: In one viewpoint there is no talk about getting permission from the husband when transferring the property, yet in another, the woman should get his permission for so doing.⁷³

Nevertheless, when the woman's *atarsagāhīh* is proven, if the woman shares with her husband or possesses some properties and income from him, they will return to the man. This decree does not involve submissive woman.⁷⁴ As a matter of fact, once woman's *atarsagāhīh* is proven, not only will she be deprived of her husband's property and inheritance but also the children, born after proving her *atarsagāhīh*.⁷⁵ If the man makes the *pādxšāy*-wife his own partner, she is free to give that property to another person, yet once the man announces her disobedience, the property will be returned to him again.⁷⁶

Also in Islam, woman's dowry is considered her own property.⁷⁷ Even in case of divorce, and based on⁷⁸ "لَا يَجُزُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْنَاهُمْ هُنَّ شَيْئًا", "It is not lawful for you to take back anything you have given them", the man should give back the woman's dowry. Furthermore, it has been said in⁷⁹ "لِلرِّجَالِ نَصِيبٌ مِمَّا اكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا اكْتَسَبْنَ", "For men is a share of what they have earned, and for women is a share of what they have earned." Based on this verse, one can deduce the financial independence of man and woman in whatever they gain. However, it seems that woman cannot give from her own property to others without her husband's

⁷² Macuch, 2007: 191.

⁷³ *MHDA*: 6, 14-7.2.

⁷⁴ *MHDA*:5, 15-6.1; *ibid*: 7,11-13.

⁷⁵ *MHDA*: 7, 2-7; *ibid* 6, 2-5.

⁷⁶ *MHDA*: 6, 14-7.2.

⁷⁷ Moghniyeh, 1989: 263.

⁷⁸ Koran, 2: 229.

⁷⁹ Koran, 4: 32.

permission⁸⁰ as she cannot give from his property as well. It is noteworthy that in case of her being a *nashezeh*, no alimony will belong to her.⁸¹

Conclusion

Based on what was said, in both religions family members have some duties towards one another. The man's duty in both religions is to accept and guard the children. The woman also has to be obedient to her husband, which is common in both religions. The issue of respecting the parents as well as the couple's good companionship is common in both religions, even though there are some differences in the details. As it was mentioned, in both religions the man is the guardian of the family and the children are under his guardianship until puberty and marriage. In Zoroastrianism, the father can grant the guardianship of his child to another person, whereas in Islam only in case of father's death, is a guardian appointed for the children. In Zoroastrianism, in case of poverty, the father can sell his child as a slave, while such a thing does not exist in Islam and if the father is poor, he will be exempt from paying alimony to his children. In fact, in both religions it is the man's duty to supply the means of living of the family as well as paying the family members' alimony. In both, the duty of providing the living costs of the children is on father until the boy's puberty and the girl's marriage, and in case of the wife it lasts as long as she is alive. In Zoroastrianism, when the father cannot pay the family's alimony due to his poverty, it is paid from the son's properties. Also in Islam if the father is unable to provide the alimony, the grandchildren's alimony is provided by the paternal grandfather and in case of father's absence, it is paid from mother's properties. In both religions, in case of *atarsagāhīh* or *nashuz* (disobedience), the woman is deprived of part of her own rights, such as receiving the alimony. In Zoroastrianism, not only with woman's *nashuz*, she is deprived of some of her rights, including the properties she has been given by her husband, but her children will be deprived of their rights as well. In contrast, in Islam with woman's disobedience, her children will not face the same problem and only the woman, herself, is deprived the rights she is entitled to. In Zoroastrianism only the woman's *atarsagāhīh* exists, although in Islam the man can be considered a *nashezeh* as well. For *nashezeh* woman in both religions, being deprived of the alimony exists and the man can punish either of them. The punishment in Zoroastrianism is to brand her; also if she insists on her disobedience three times, she becomes *marg-arzān* (death-worthy). The punishment exists in Islam too, e.g. the man separates his bed from the woman and if she does not become obedient, there will be physical punishment. Based on what was mentioned, in both religions there are some financial relations between the couple. In Zoroastrianism, the man can transfer some of his properties to the woman. In Islam, man faces the payment of the dowry to the woman and in case of the latter's request should pay it. In Zoroastrianism, woman can transfer the properties, belonging to her, to a third party; however, in Islam this should be done with the husband's permission. In both religions the *nashezeh* woman has no alimony. In addition, in Zoroastrianism husband's properties, which are transferred to the woman, will belong to the man if her disobedience (her being *nashezeh*) is proven.

As it can be seen, the rights and duties of family members in both Zoroastrianism and Islam are much similar to one another, though some differences can be seen in their details. Accordingly, it does not seem wrong to consider some sort of connection and continuity between them.

⁸⁰ Sheykh Saduq, 1989: 85.

⁸¹ Ibn Qudama, 1968: 236; Sheykh Tusi, 1964: 483.

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