The position of alimony in religion books and Iranian law

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Abstract

In the principles of Islam and to comply with it in Iran’s law, alimony must be paid to certain people, article 1107 of civil law has described alimony that it includes housing and clothes, food and furniture which are traditionally must be fit to a woman’s conditions and if a woman used to have servant, - due to sickness or other physical problems – a servant must be hired for her. Alimony must be paid if the woman had permanent marriages with her husband and obeys her husband in matters which are necessary. But in some cases like having a poor husband or non-permanent marriage or apostasy – done by women – or her husband refuse her as his wife – lian, a kind of divorcing – and refusing the children by her husband, alimony won’t be paid by the men.

Keywords: alimony, nushuz, refuses, divorce.
INTRODUCTION
Before discussing the main topic, it is required to mention some related topics which are included the “criteria for determining the amount of alimony”, “alimony issues” and “the concept of alimony”, then we will discuss and analyze the main issue.

CRITERIA FOR DETERMINING THE AMOUNT OF ALIMONY
According to some religious scholars’ opinions, there is no clear special and definite amount for alimony in sharia, but it is to provide women’s necessities and needs (Tahir al wasila 315/ 2). Some others believe that – like Saheb e Jawaher - the amount of alimony depends on women’s past lives, if a woman was from a reach family, the amount of alimony must be considered according to her position, otherwise, her alimony must be paid just like other women. Her actual social and occupational position also must be in account just like other women’s social and occupation positions (Jawaher al kalam / 340/1). Some lawmakers believe that a husband should pay the alimony based on the woman’s social position, it means that it should be paid in way that others in her rank have the same natural and moral attributes. (Civil law/ 436/4) other lawmakers believe that the amount of alimony is specified from her husband’s property, not her father’s property. (Civil law/677)

Alimony issues
Dr. Mostafa Mohaghegh Mirdamad has identified the alimony in 8 categories, based on religious books. 1 food 2 clothes 3 cooking tools 4 cleaning tools 5 makeup utensils 6 shelter 7 mattress 8 servants. He also mentions that alimony is not just limited to these 8 categories, and if there were other needs, they must be provided. (studying the rights of families in sharia / 242).

Concepts of alimony
Nafagheh is Arabic word and it means charity which is paid for wives and children by the husbands. (Moain Persian dic) also it means necessities. Shia scholars believe that Nafagheh (alimony) includes food, clothes, shelter, …. But the general idea among the religious scholars about the alimony is: alimony is something that men pay to their families and close relatives and servants and it includes food, clothes and shelter.

The definition of alimony in civil law, according to article 1107 is that, alimony means shelter, clothes, food and furniture that is provided for woman considering the woman’s class, and if the women used to have a servant or due to an illness she needs a servant, a servant must be hired for her. By this definition the principles which are introduced for alimony, are examples and they are not limited to these 8 categories because the women’s social position and customs are different.

Term of alimony obligation
1 Alimony is for permanent marriage and it not paid for temporary marriage.
2 the woman should obey her husband
3 not apostatized and remained in Islam
4 not traveled without her husband permission, except Haj. (Eza al fwaed/279) and (Tarjuma al aharia al islam/762).

Sahib e Jawaher believes that, it is not important whether the couple live together or not, and this situation has no effects on alimony and it is enough by conventions that they are husband and wife. (Jawahe al kalam/677).

THE FEATURES OF WOMEN’S ALIMONY AND RELATIVES’ ALIMONY

A: the alimony of women’s takes precedence over relatives’ alimony. It means that if somebody can’t afford the alimony of both sides, he must pay the woman’s alimony first.

B: the women’s alimony is not subject to the men’s poverty, that means if the women are rich they can request the alimony, but for relatives the wealth of each part is important.

C: the women can demand their past alimony – the alimony must have paid in the past – and for this alimony the can sue at the court, meanwhile the alimony of relatives is related to the future. (Safaee and Emami, families rights 153). The article 1206 of civil law says that the couple can demand their own past alimony meanwhile the alimony of relatives can be demanded in future.

D: alimony is an obligation and it must be paid and according to law of Iran, women are not obligated to pay the alimony. Relative alimony is a reciprocal act.

E: the debt of an alimony for a woman is prerogative, and in any case, like bankruptcy and death (husband death) it must be paid before other debts. This conditions are not true for relatives but for children (Safaee and Emami, families right) and Article 1215 of civil law is similar to this.

The waiver of alimony

1 when the man – woman’s husband – is poor
2 disobedience wife
3 temporary marriage
4 if the woman changes her religion (Islam) – apostasy
5 if her husband lean – a kind of divorcing in Islam – her and rejects his children
6 irrevocable divorce for pregnant women. (Tahrir al wasila 559/3)

The qur’anic reasons for paying the alimony

The fallowing ayahs show the obligatory of alimony payment clearly:

Baghara 23
Talagh 6
Nesa 34

Some reasons from holy prophet Mohammad for paying the alimony

Jaber ebn Abdolla narrated the prophet Mohammad in last haj said: be aware of god’s command about the women’s right, because they are god’s gifts in your hands and you have made them Halal and desirable for yourselves by using god’s words. – Nekah, marriage, so, you have to provide them food and clothes as they deserved. (Arzatal
huzi le sharh sahih al trmzi 467/3) and ( Moslem in number 1105 with a little difference in narration)

When Hend, - Atebeh’s daughter and Abu sofian’s wife – came to Mohammad and said that “Abusofian is a stingy person and he doesn’t provide my son and my needs completely and I had to take some of his properties. The prophet said: “take what you need, until your needs are eliminated.” ( Sahih al Bokhari 1379/ 3) This Hadis – prophet’s speech – shows that alimony is women’s earthen right. If the man of the family wasn’t responsible for alimony the prophet Mohammad didn’t allow Hend to take her husband’s property without his permission.

Who is responsible for alimony payment?
A: if the couples reject the alimony
In this condition the couple can go to the court, and court force them to pay the alimony and if they didn’t pay alimony it, the abstained ruling can pay the alimony from their properties and in any condition that the court couldn’t reach their properties, the court force the husband to divorce her wife, and if the man refuses to pay the alimony – despite of having affordability - the court sentences him 79 lashes. ( Nafaghe AND Tamkin in families 186/4)
We believe that this sentence can’t be affective, because if the judgment is to be implemented it will have no good consequences. Also if the judgment isn’t to be implemented it will have the same negative consequences on the families and societies. In some cases the men of the families resort to lie to refuse the payment of the alimony. We can conclude this process in the court is time consuming and also these sentences just can ruin the families’ principles and they can widen the arguments inside the families. So its better to implement the sentences and not aboveboard.

Another question is about minor couples, in this case who pays the alimony?
According to the article 1191 of civil law, a minor is under the guardianship of his father and paternal grandfather and if he loses one of his parents – father or grandfather - his father or his grandfather can choose a guardian. These guardians are called “the minor’s special guardians”, and whenever a minor has no guardians, a guardian will be chosen for him. So the alimony payment for husband who is minor, alimony is paid by his guardian which is identified by the court. ( couples alimony in Iran, U.K and India’s law)
If the couples are pixilated, they can’t do anything with their properties and according to the article 1217, the cant be in charge of their properties. And if this incapability related to the minors, article 1191 is used for them. (Mentioned above) and when the couples are absent and they have not made any decision for their properties, and there is no one to get the property by the law, by article 1112, a trustful person will be chosen by these people have benefit and claim in the property. And according to the article 1115, after identifying the trustee, he will in charge of the property and he must pay the alimony of absentee people from absentee property ( article 1115). Also the couple can choose a trustee for their property when the man of the family is absent, but it isn’t necessary and they can go to the court and court can give them their alimony.
share from the man’s property. The alimony is paid when the women requests her alimony after the marriage.

B: financial sources of alimony
1 the husband’s income from work or from inheritance
2 Zakat,- a charity system in Islam – for a person who is indebted and can’t payback them and if her debt is not used for sins. (Tozeh el masael, problem no 1425). Alimony is a debt too, and if a man wasn’t able to pay it, he must pay it in future when it can be affordable for him and he has enough money to pay it. And according to this condition a man pay the alimony from Zakat.

C: claiming alimony payment and denying receiving it
The claimant brings reasons and if the claimant didn’t have evidence, the person who denies the alimony, must take an oath and if the couples live separately the women’s words and her oath is accepted and if they claim the alimony, they must bring their reasons. If the man and woman live in the same place, man’s promise is accepted by his oath, and if the woman claimed that her alimony is not paid, she has to bring the evidence. So if the couples don’t take oath for alimony and his reasons aren’t valid, the alimony is paid and if the man doesn’t take an oath for what the woman claims, he must pay the alimony. Also the woman must have her own reasons for a nonpaid alimony.

D: alimony during the revocable divorce
According to the religious scholars and also the article of 1114 of civil law, the alimony of revocable divorce is paid by man but when the divorce happens because of disobeying by the women (civil law/ 678) and (Eizah alwed/270). Paying the revocable divorce alimony is continued until it is finished and it makes no difference whether the woman is pregnant or not, (jawaher el kalam 317/3) and (women in shia sharia) and in theory there is no difference whether the woman is free or slave and this part is consensus.( Tarjemal sharaha/720).

E: Alimony for irrevocable divorce
In this kind of divorcing the alimony isn’t paid, because the marriage is not existed anymore and the conditions for paying the alimony are not valid. In this situation just the pregnant irrevocable divorced women can get the alimony and this is due to her baby (Eizah al afawaed/277). According to article 1109 (civil law) if the divorce is an irrevocable divorce, the woman can’t get the alimony unless she is pregnant and she must be pregnant of her own husband, and she gets the alimony until the baby is born. If she is pregnant by other men not her own legitimate husband, the alimony can’t be paid.
F: when the marriage is not valid
Before this topic we have to mention this that all the negative sides of a woman that they cause the marriage invalid, reveal after the marriage. According to articles 151, 152, 153 of civil law they must set a time span after they divorced and this time span is similar to time revocable divorce. By the article 109 of civil law, if the women pregnant from her legitimate husband, she can get the alimony until she has the childbirth.

F: alimony during death time
This condition is similar to revocable divorce but the time span is different, it is 9 months and 11 days. In revocable divorce the man is alive for paying the alimony but in this condition her husband is dead, but they have one thing in common, in both the marriage is ruined (Mesalek olafham 587/1) . In civil law – (article 1110) – no alimony is devoted, but in Shia’s sharia some religious scholars and Emamas believe the payment of alimony for a pregnant women when her husband is died (Tarjumal sharea / 722). For example Emam Ali says that: alimony is true for a pregnant women until she has the childbirth. One reason for the article 110 of civil law is that the child must be alive when it is born, if it isn’t alive, the mother can’t get the alimony.

Conclusion:
According our research, the alimony of a woman must be fit to her habits and her social position and because everything is changing – traditions, customs, social behaviors, economic conditions and…. The alimony of the women can be changed depending on time and region, so we can’t have a clear definition of the amount of alimony and for each case we should consider several factors. Alimony can’t be paid for all women but for those women who are married permanently and they obey their husbands. So for temporary marriage and those women don’t obey their husband, alimony isn’t paid and for those women who are in period for a special event – like Alimony for irrevocable divorce, alimony during death time,…- just revocable divorce can get alimony and in other conditions, just pregnant woman can get alimony.
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