

# Comparative study of nature and effects of Marriage in Iran law and Islamic jurisprudence hanafit

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**ABSTRACT:** Marriage is such contract that there are differences about its nature and effects some consider it as transaction and some call it worship these questions are proposed about its effects and nature that marriage is 1- financial or non financial contract 2-how is mafozeh ablaze and commissioned mah(mafozeh al mohr)marriage 3-what are the inherent effects and applying marriage contract ?4-is marriage argent or recommended? this research has been collected by descriptive method we can conclude according the proposed questions that the interpretation of some issues such as marriage contract or marriage financial non financial necessary or permissible exchange or non exchange the relationship between mahr and the inherent effects and applying marriage that include sexy relation common life under guardianship alimony of general and particular condescension has been effective we explain them therefore we agree that each one of these two institutions under take on parties various duties and rights accordingly. Main challenge of this research is to research and study duties and rights of parties in each one of two law systems and their similarity and differences in Iran law and hematite jurisprudence after studying nature and effects of marriage in Iran law and hematite jurisprudence marriage discussions are part of Quran judgments the proposed issues about marriage in Quran has been paid attention by all Islamic religions including Shiite and Sunnite especially hanafite jurisprudence at the end of this research there are abundant similarities despite differences.

**Keywords:** marriage, Marriage nature marriage effects commissioned Mohr mayor maintenance expenses condensation.

## INTRODUCTION

Marriage and its effects and nature that will be the main axis of the thesis from han afit jurisprudence and Iran law is one the most important social relationship because humans have been created social inherently need to satisfy sexual desire and man and woman are in two opposite polar that need to each other s and evolve it through one social contract called marriage and human society including Muslim non Muslim man or woman consider the importance of marriage and feel. Its problem and they concern even according to same the most worried issue is marriage problem under privileged persons lihe rich people complain about the burden of marriage problems (they don't that they cause problems themselves and it is futile )

Islam has introduced marriage as one of the easiest subject .the holy prophet of Islam (mohammad) and his deer companions have performed its in easy form and showed pattern people in other words .the holy prophet says. Marriage is my tradition ,anyone who disobey of my tradition it not mine.

According to the above cases we can pay to studying comparative study of effects and nature of marriage in Iran law and hanafite jurisprudence.

### **Expressing problem:**

Considering that in Iran Islamic republic ,all kinds of Islamic religions by different beliefs namely least asana ashn shilte that is formal religion of Iran hanafite Sunni shafite live ,they need to each other in the social communication

and it is possible that man and woman marry with different ideas and it is necessary to express that in matrimony life man and woman have been subjected to what religion and how they continue their lives without differences ideally and appropriately or if there is difference between man and woman with different opinions considering that Iran law consists formal jurisprudence of asna ashri religion, how is family legal judge investigate and issue order it is necessary to clear subject and ease performing of judge and various religions marriage s that we study and research this respect.

Then comparing and analyzing these two ,we found positive and negative points ,because there are similarities in the nature and effects of marriage in hanafite juries prudence and Iran law like ayga marriage correctly and necessary of paying alimony of woman by husband.

### ***The important and necessity of performing research:***

Considering that marriage contract is one of the most important contracts that human has in his/her life and occurs for you that can change has path of life and is part of important and necessary affairs of social life ,the comparative study of the nature and effects of marriage in Iran law and hanafite jurisprudence is different in two religious belief in respect to the manner of marriage contract and identifying its nature and effect after contract and legal rules dominant on them has high importance for importance of marriage in human life that extraction of the common and ideal legal system continues and survives social life and Iran society and the other countries it is necessary to discuss more that in the more world points ,there are relation shies of different religions and they live with each other and try to remove belief differences and regarding religious common of all Muslims ,they must unite that it is emphasized to unity and fraternity by god word and holy prophet tradition. other is from

### ***General purposes***

Analysis of legal subject explains the ideas of two jurisprudence that one is from asna ashari Shiite and the other is from hanafite religion.

### ***The main question:***

What are the similarities differences in the nature and effects of marriage in Iran law and hanafit jurisprudence ?  
What are the effects of marriage in Iran law and hanafit jurisprudence?

### ***Research hypotheses:***

- 1-There are similarities and differences about the nature and effects of marriage in Iran law and hanafit jurisprudence.
- 2- The effects of marriage are same in Iran law and hanafit jurisprudence?.

## **MATERIALS AND METHODS**

In this research library and field methods have been used according to its theoretical and practical bases in the library method we refer to various library and collect the related books and we pay attention to material that match with our topic and field method is used to study the views of the different persons and lawyers and judges and to collect the obtained information from experiences .it is clear that in library method ,the information obtained through indexing cards sampling and extracting materials in books and in library method we obtained information by interview and providing questionnaire it is necessary to mention that a series of the obtained information from two methods has been studied analyzed that their positive points have been paid attention as one the most achievement of research.

### ***Review of literature and the related***

The works and sources include :book ,article, thesis it is necessary to mention that the previous researches differ from our current research and this research presents new subject ,this it is innovative and has high scientific value .considering that the topic of this thesis comparative study of marriage nature and effects in Iran law and hanafit jurisprudence is new topic ,there isn't wide source .

### ***The concept of marriage from view of Islamic jurisprudence***

The first martyr says in the second volume of lameh dameshahieh book according to the Shiite ideas after speaking the virtues of marriage and hadithes about marriage contract :marriage is strict recommended and its virtue is famous between Muslims and Islamic law so far religions leaders have said every one marry preserve half of his/her religion and in one narration ,it is said two-thirds of religion is preserved and marriage is consider the biggest benefits after Islam the concept of marriage from view of hanafit jurisprudence:

Immameyyeh jurists explain clearly marriage contract and inferred more to how it occurs and the condition of its correctness and the first martyr says in lameeh dameshqheyeh about marriage :means that I want to marry you means that I marriage you or I marriage you and it isn't performed with other word and its acceptance includes. I accepted marriage or I accepted marriage or I accepted.

The first subject the nature of marriage from view of immameyyeh Islamic jurisprudence and hanafit and Iran law:

The nature of marriage is a contract from perspective of hanafit and immameyyeh jurists nor Ayqa because Ayqa is a legal action that one person can perform it and the other party of contract cant infer in it like divorce taking release of adept and so on but in the marriage contract it isn't correct and both two parties can perform it and just one person cant perform it in the civil law of Iran Islamic republic such as 1047-1048-1053-1063-1065-1066-approved and contract mentioned as marriage expressly according to the above provisions and there is the interference of parties wills to contract marriage there for marriage is contac Ayqa.

The effect of mahr information of marriage contract:

The role of mahr information of marriage contract isn't effective.

The contract without mahr is correct in wise people common law and jurist consensuses:

- a- According to the rationality, contract without mahr is correct .the marriage contract isn't religious establishment ,but it is rational off air .if mahr is regarded as one of the element of marriage contract as price of property in legal parlance(saman)and exchange in one business, it is necessary according to the wise people common law ,contract of marriage is void ,but it isn't correct. The possibility of agreement about the amount and time of .mahr.

- b- Payment:

There are order about the determination of sum and the time of agreement that aren't compatible with its exchange such as :

A-serious recommendations of lawyer recommend mahr reduction ?it is obvious that there are abundant narrations.

### ***License of mahr amnesty by woman***

Previsions such as license of mahr amnesty by woman that are about amnesty of mahr don't correspond to exchange it, god says: and give to the woman(whom you marry) their mahr (obligatory) bridal-money given by the husband to his wife at the time of marriage )with a good heart but if they ,of their own good pleasure remit any part of it to you ,take it. and enjoy it without fear of any harm .(surah An-nisa, verse4).if it was business ,mahr was consider as exchange ,then there wasn't amnesty of mahr by woman.

### ***Denying profitable economical view to woman***

A – economical view of parents to girls denied in Islam .in paganism ,parents regarded mahr as their own rights. In the interpretation ,kashaf .and others write .when one girl was born for one of them .other when he wants to congratulate to him said :she increases your rich .it means ,girl will marry and receive mahr second subject: non financial in marriage Immameyyeh and hanafit jurisprudence and Iran.

### ***Mahr nauer***

Because mahr nature is important in marriage contract that if we consider as like one of two exchanges in exchange transactions, necessarily we observe laws related to transactions in exchange(compensation) contracts ,unless we don't have duties .According to legal and jurisprudence laws, we find that mahr in permanent marriage isn't considered as exchange for this reason, mahr in permanent marriage don't harm on its due farm ,but in temporary marriage hasn't characters tics and features of permanent marriage has at more financial aspect mahr has the main role and marriage contract isn't occurred without it.according to the famous jurists, the purpose of marriage contract is to create generation, while the purpose of temporary is marriage is improvement of property .some lawyers believe that mahr is property that man must give to woman by mariiage contract.

third subject :A)impediments of marriage in Iran law and hanafi jurisprudence.

Marriage with the relations by blood is forbidden ,even if the relation ship is based on mistake or adultery:

- 1- marriage with father or grandfather, mother or grandmothers or to their ancestors to whatever generation.
2. marriage with children ,or descendants to whatever generation
- 3- marriage with the brother and sister and their children, or their descendants to whatever generation.
- 4- marriage with the one s own paternal aunts and maternal aunts and those one,s father, mother. grandfather, and grandmothers.

Foster-relationship is the same as relationship by blood as far as impediments to marriage are concerned, provided:

That firstly-the milk of the woman takes its source from a legitimate conception.

Secondly –the milk is such ed directly from the breast.

Thirdly –the child has at least had full milk for 24 hours (one nigh and one day )or for15 consecutive times without taking in between any other .food or milk of another woman.

Fourthly – the child has taken the milk before has reached the full age of two years (from its birth)?and fifthly – the milk taken by the child is from the same woman with the same husband. if there fare,a child takes during twenty –four hours some milk from one woman and some from another ,this fact does not debar marriage even if the two woman have a common husband.

In the same way if a woman has a foster –daughter a foster-son whom she has milked each from the milk belonging to a separate husband that son and daughter cannot be considered as foster brother and sister and their marriage in not prohibited for this reason.

Marriage between the following persons is per manently forbidden because of relationship by marriage:

1-marriage between a man and his mother in law or his grand-mother in law of any degree whether the relationship is by blood or foster relationship.

2-marriage between a man and woman who has formerly been the wife of his father or one of his grand fathers .or of his son or his grand children even though the relationship may be of the foster kind.

3- between a man with females of descent from his wife no matter of what degree no exception being made even if the woman is a foster –relation ,provided that the husband and wife have already consummated the marriage-

The second article: marriage of two sisters by the same time by one man is forbidden even if the marriage of each one of them is of temporary nature it means two sister whether relationship by blood or foster – relationship cannot marry with one man day the same time.

Third article every person who marries a woman knowing of the existence of marriage ties binding the wife and of prohibition of his own marriage with that woman or who marries a woman wow has not yet passed the period of the uddeh and the prohibition of the marriage ,his marriage will definitely and permanently be in capable of becoming the wife of that man ,in the case of ignorance ,but where matrimonial relations have not taken place ,the marriage will be null and void but marriage between the two does not become permanently prohibited.

1-separation caused by a solemn imprecation (lain) involves a permanent bar to the marriage of the parties concerned.

2.amarriage contract will not be valid while the party concerned marries with knowledge of the fact that such a marriage is prohibited ,the marriage will be barred fore aver.

3- Adultery with woman who has husband or woman who is in uddah of return will be barred for aver.

Prohibition resulting from adultery or sodomy:

A-if any one perform sodomy with a boy, cant marry with his sister or daughter.

B-A woman who was spouse of one person three consecutive times and has been divorced is forbidden for that man unless she marries with another man by permanent contract and after matrimonial relation with him by divorce or termination or death separation is occurred.

c-a woman of each person that divorced with 9 divorces that 6 divorces are uddah, barred or illegal for ever for him.

B)impediments to marriage from view of hanafit jurisprudence .

1-All above cases about the prohibition of marriage are the same in Iran law and hanafit jurisprudence except that articles 2,3 ,5 and second speech about the amount of milk that in hanafit jurisprudence if baby take s little milk and one time there ware impediments to marriage and about the second article also if the milk isn't sucked directly and milked ,there was impediment and marriage is prohibited 2)if one person made irrevocable divorce whit one word to divorce in there times there divorce, the woman forbidden to marry with the first man without removing impediments or re marriage of woman and matrimonial relation with her husband and after divorce and finish of uddah.

Marriage of Iranian Sunnite Muslim woman with foreign Sunnite Muslim man is allowed in hanafit jurisprudence.

4.it isn't barred forever it term of adultery of man with husband woman or marriage of man with a woman in other person in matrimonial ties or marriage of man is covered with the pilgrimage garment with woman from view of hanafit jurisprudence, namely marriage while the party concerned is covered with the pilgrimage garment, is allowed and if one person who had matrimonial relation before going Arafat is forbidden and after Arafat is allowed and just party must vow one camel unless person is sinful in adultery marriage adulterer cant marry with daughter of one who is adultered and it is allowed with other her closest family members and herself.

Fourth subject: the effects of marriage in Iran law (immameyyeh jurisprudence) and hanafit jurisprudence:

After marriage is accrued in due from the effects exits for contract marriage parties that include two effects inherent effect of marriage2-apply effect of marriage that there aren't differences in Iran law and hanafit jurisprudence in this respect.

But other cases that there are differences include: condensation, right of imprisonment the concept of maintenance expenses the amount of maintenance expenses the reasons of maintenance expense obligations and jurisprudence view about treatment cost and taking servant for woman and determination of maintenance expenses.

### ***Inherent effect of marriage***

They are effect that exist in the nature of contract and if there was condition against them contract isn't in due from and if the conditions. Avnet aren't mentioned to provide deeds at the time of contract it won't exit defect in marriage contract and it is correct with special conditions.

Apply effect of marriage

### ***Condescension***

Condescension means obeying orders and empowering woman to man in exchange for conclusion of marriage contract there are two kinds of Condescension.

A-public Condescension in clued :1.woman went out of house without permission of her husband :if woman doesn't submit to enjoyment of husband and comes out of home without permission of husband in fusing to talk to him .but according to the cases of coming out house without permission of spouse is nashezeh and maintenance expenses isn't duty on man.

B)special condescension in clouds satisfying sexual instinct and using man of woman such as matrimonial relation the guarantee of performing lace of Condescension of paying maintenance expenses.

### ***Historical route of imprisonment right in Imameyyeh jurisprudence***

Ibn joined in is fatwa recognized imprisonment right and the discussions of Al bei book have allocated one chapter to this topic .after he other Imameyyeh jurists have paid attention to it .shikh mofid has expressed in ahkam alnesa (orders of woman )that woman can refuse submission .as long she hasn't taken her mahr completely.

### ***Imprisonment right in hanafit jurisprudence***

Imprisonment right in hanafit jurisprudence has been proposed and identified widely .sarakhsi infers in virus cases in almabsoot book .samarqhandi infers to imprisonment right in different cases following him. Osani hanafit has proposed imprisonment right in the marriage .Ibn najim expresses imprisonment right in abei book.

Fifth subject: the concept of alimony ,obligation reasons and its amount:

The strength of family system has direct relation with duties of mutual parties of marriage contract and Islamic legal system has paid attention to these rights them right of cost of maintenance is such rights that quran has paid much attention to it like other general others and the main issues because it works woman.

### ***Obligation reasons of alimony (cost of maintenance )***

The main reason of jurists to demonstrate obligation of alimony are verses and narrations

### ***Legal standard about alimony obligation***

Article 1106 :the cost on maintenance of the wife it at the charge of the husband in permanent marriages .article 1109 :the cost of maintenance of divorce woman is for husband unless divorce is suspended ,but if uddah is an irrevocable divorce for cancellation of marriage woman shouldn't receive alimony unless she is pregnant of is husband article 1110 :in death uddan expenses of woman is paid by properties of relatives on demand that they are responsible article 1111:the wife can refer to the court if her husband refuses to provide for her maintenance. In such a case the court will fix the amount and will compel the husband to pay it.

Article 1112 if the enforcement of the provision of the foregoing article is impossible the provision of article 1129 must be followed .

Article 1113:in the case of a temporary marriage the wife is not entitled to the cost of maintenance ,unless provision has been specially made for this or the marriage has been arranged on this condition.

The criterion of determining cost of maintenance amount:

When we speak about the criterion of determining cost of maintenance it means that when is the amount of cost of maintenance is determining ?is financial state of husband considered or is it criterion of canonical status of woman :for example if poor girl marries with rich man is it considered alimony of rich woman, because she is wife of rich man? Status of woman is important and although man is rich but if woman is poor and lives with poverty in parental home alimonies that are obligatory on man are alimonies of poor woman and if husband provides affluent life for his poor wife it is enforcement of his behavior not duty .

Sixth subject views of jurists about alimony rule and criterion

### ***View of imameyyeh jurists about alimony rule and criterion***

In Imameyyeh jurisprudence there are two views famous view and non famous view.

#### **A) famous view of imameyyeh jurists**

the famous view is that criterion status of wife and must be determined according to woman life in that city and land second martyr consider alimony criterion as wife status.

Amount of cost of maintenance depends on woman necessities according to common law of woman in that land.

#### **B) non famous view of imameyyeh jurists**

The second group of imameyyeh jurists believe that husband status is a criterion to determine maintenance expenses if woman is from rich family and man is from poor family maintenance expenses in poor life is consider for woman.

The view of Sunnite muslim jurists about criterion and rule of maintenance expenses:

Among jurists of four religions of Sunnite muslim there are two.

View:

#### ***A) view of hanafite and shafiite religions***

One of the saying has been said from hanafite jurists and also the view of shafiite jurists are like second group of shinte jurisprudence that they believe criterion in maintenance expenses is husband status .hanafite has been said that financial status man is valid to determine alimony shafiite has said that amount and type of maintenance expenses depend on man status according to his richness or poverty thus it is said in Egypt law 16 no 25 ,1920 modified according to law no 100

1985 :financial status of man valid to determine alimony

#### **B) view of malekiat and hanabalite religions**

These two religions believe that alimony amount must be determined according to status of marriage parties not by status of man or woman lonely .thus if one of parties is poor and the other party rich middle extent of alimony must be determined.

Seventh subject: typical specimens of alimony and views of jurists about it.

### ***Typical specimens of maintenance expenses***

There aren't differences in opinions between Sunnite and inmate religions about some typical specimens of alimony .for example jurists don't doubt in their obligations about food clothing dwelling. The typical specimens have been said include clothing dwelling quilt servant clean lines equipments .but there are deep differences between religion that some time it is about affair that woman life depends on. About treatment cost of woman .for example there are differences on opinions between jurists some regarded as absolutely obligation , some didn't consider it absolutely urgent and some regarded as urgent under conditions in article 1107 cost of maintenance includes dwelling clothing food furniture, treatment and health cost in proportion to the situation of the wife on a reasonable basis and provision of a servant if the wife is accustomed to have servant or if she need one because of illness or defects of limbs that above law has been executed according to the famous saying of imamate jurists.

## **CONCLUSION**

The technique discussed in this paper provides an interactive approach in which the decision maker can search for an acceptable solution of the multi-objective optimization problem. The proposed method to solve multiobjective linear programming problem is better than many existing methods as the concept of bound is used in the iteration.

If we substitute some values to  $a_i$  ,  $\alpha_i$  in multi-objective linear programming problem (3.1), it reduces into single objective LPP. This discussion also holds in the case as given by by Kanniappan and Thangavel (1998). The same problem for integer solution was studied by Bhargava and Sharma (2003).

## **REFERENCES**

- al-rahman JA. 1985. juries prudence in four religions dar al-haya al-tarath al-arabi seventh printing volume 2.beirot.  
ashahar osameh omar soleiman. 1999. first printing lordon  
behbahani SA.2000. qhavaed al-elleyeh.third printing ansaryan publications volume2.  
farmaj P. 2003. altaelim christion.  
hasri AM. 1998. the differences of jurisprudences ,alkeyat al zahreyeh maktab.  
helli, ibn abdollah M. 2004. anz al-qrqhag in Quran jurisprudences Iran publication ,mortazavi publications ,qhom.  
jafari langarodi MJ. 1997. law terminology printing danesh ganj Tehran.

- jabaei ameli ZA. (sani martyr). 1989. (alrozat) albahieyeh in explanation of alalmaat aldamesh qhom davari publication volom 5. 15-zein Aldine jabaei ameli(1413) masalek alfaham in marriage in Islam law al-maaref al-islameyeh institution first printing volume8-qhom.
- Ibn bolban mohammad Ibn badr aldin. 2000. briefs in lam ahmad Ibn hanbal jurisprudence ,Islamic albasheir ,second printing :beirut
- Ibn najim and Ibn Ibrahim ZA. 1996. alshaba and alnazar ,abdol aziz mohammad alvakil research aljalasi and parties institution volume 5 :qhahereh
- Imami ,sayyed hasan. 1998. civil right Islameyeh library volume 4 :tehran
- Imami,sayyed hasan. 1993. civil right fourth? Fifth volume publisher or Tehran danesh ganj
- Ibn esmaeil BM.2000. sahih albokhari seventh volume :puplisher of Pakistan taj company.
- nazar KH. 2006. mohammad ,al.fatawa(fatwa)of zahedan dar al-oloom in maki of zahedan city.
- rousef B. 1992. personal states from prespective of laws publisher of tehrans danesh ganj.
- tehanavi AA.2007. paradise ornament publisher of pahistan tag company
- tehanavi AA. 2005. Islamic marriage publisher of company taj in lahoor of Pakistan
- tehanavi AA. 2006. matrimatial custom: