

Equality and Gender Seminar

“Divorce or Social Suicide”

Why Iranian women should not be denied the rights to seek divorce

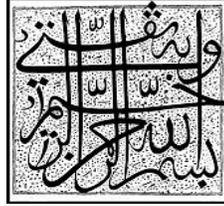
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Introduction

Women in the Islamic Republic of Iran can not ask for a divorce ¹ simply because they do not love their husband any more. ² A woman has to have a “reason” for seeking the legal separation and the government argues that love and affection, as a part of irreconcilable differences, is not sufficient. A woman has to “act” in front of the family court, in order to have a legal claim. ³

Parvaneh ⁴ is such a woman. Even though she was not a minor when she married her husband, it was mostly based on her family’s compelling arguments that he had a great educational background and would be able to provide a great home for her. The question of love never arose. Five years later and mother of two boys, she wanted to seek a divorce. The court told her that she could not, and that if her husband agreed she would need to give her boys to him. ⁵

Is this rule based on the Islamic treatment of women and their role in society or is it furthermore an erroneous application of a vague law?

1- Based on Islamic Law there are two forms of marriage: a) permanent and b) temporary. Additionally there are three forms of divorce for the permanent marriage. A permanent divorce is pursued when the man speaks out the word divorce three times within the required interval. (seh-talagh). Scholars dispute whether this can be done in one or several sittings. Thereafter he will not be able to remarry his ex-wife, unless she marries another man, has a matrimonial relationship with him and divorces him. Temporary marriages are “divorced” after the expiration of the set time.

2- 9 *Tulsa J. Comp. & Int'l L.* 319, *Marriage and Divorce Law in Pakistan and Iran: The Problem of Recognition* Kristen Cherry

3- Documentary film by Ziba Mir-Hosseini: *Divorce Iranian Style*, A 15 year old girl, who was married off by her father was seeking a divorce from her husband, who was 20 years her senior. The judge did not accept her arguments that she did not love her husband, and that based on Quaranic law, she had not agreed to the marriage. The second time she went to court to bring her suit, she simply claimed that her husband was insane.

4- Interview with Parvaneh N., to protect the privacy the name has been changed.

5- Civil Code of the Islamic Republic of Iran Art. 1169: A mother has preference over others for two years from the birth of her child for the custody of the child and after the lapse of this period custody will devolve on the father expect in the case of a daughter who will remain under the custody of the mother till 7 years.

I. Iran vs. Islam

Women's rights in Islam seem to be interpreted and misinterpreted, perhaps more than in any other religion. This might be because of the lack of knowledge of insiders and outsiders of the religion, as well as the political representation through the Middle Eastern countries, with the starting point of the Islamic Revolution in Iran in 1979.

a. History of Iran

i. Women's role through the Persian Empire

In the Persian Empire, the role of women and their rights were historically determined by their relationship with the king. ⁶

While during the Achaenemid Dynasty, the king was the sole source of authority, legislature and executive branch simultaneously, women enjoyed economic independence. They were involved in state affairs and had decision rights in numerous situations (wealth, marriage, and occupation). ⁷

Women had the opportunity to choose their profession and stay financially independent, which indicates that regardless of their family status they were not separate living creatures behind high walls, just kept for child bearing. ⁸ Through the Achaenemid Empire, Persian empresses, such as Pourandokht and Atoosah, daughter of Cyrus I., were accepted as leaders and rulers of the nation. ⁹

6- Masumeh Price, <www.parstime.com>, For example the King's mother had the highest ranks and seems to have been the head of the female members of the household. The next was the Queen (mother of the crown prince or the principal wife) followed by the king's daughters and sisters. They all had titles with recognized authority at the court, and had their own administration for managing their considerable wealth. Funerary customs and inscriptions commemorating the death of royal women also reflect the official recognition of these women, particularly the king's mother and wife.

7- Richard Foltz, *Spirituality in the Land of the Noble*, p. 35

8- Masumeh Price, www.parstime.com. They had employment opportunities earned wages and as a result were able to be economically independent.. Patriarchal system prevailed and husbands and other males had far more rights and privileges than their wives or children.

9- Richard Foltz, *Spirituality in the Land of the Noble*, p.124

ii. Women's role between the World Wars

There was unequal treatment of women under the Qajar dynasty in effect between the World Wars. This caused Iran to be seen as a backwards and unreasonable country in regards to human rights and especially women's rights. ¹⁰

The major date for re-evaluating women's rights in Iran between the World Wars is 1928: Reza-Khan, the ruling Shah from the Pahlavi dynasty decided to attend a state event with his wife and his daughters without "*hijab*", the veil. ¹¹

The veil was declared forbidden and the statute on this subject took effect in 1936. ¹² The regime wanted to nationalize and secularize law in Iran. ¹³

Women were allowed to choose their occupation, attend universities, choose their attire in public, and had voting rights. Many clerics were outraged by their unrestricted apparel, the emancipation of women, and tried to resist the social modification. ¹⁴

The Family Protection Act, which was enacted in 1967, gave women the permission to file for divorce and forbid their husbands to marry a second wife. ¹⁵ In 1978 forty-three percent of all university attendants were women. ¹⁶

10- Nikki Keddie, *Iran: Understanding the Enigma*, www.iranchamber.com

11- Massud Behnud, *In seh san*, p.197-199 "Ashraf Pahlavi says that her sister, her mother and she herself were looked down from the Farmanfarma and Teymourtadj family before her father became the Shah of Iran. But once she took off her veil and behaved like a western woman, she was accepted by the aristocratic families in Iran."

12- Khomeini, *Die Frau aus der Sicht Imam Khomeinis*, p.135 „Higab" is the traditional veil for Persian women. Reza- Khan said that women over the country should be forced by special police agents to remove the "fabric prison". The statute was put into force on January 7th, 1936.

13- www.iranchamber.com, Monique Girgis „Awomen in pre-revolutionary, revolutionary, and post-revolutionary Iran" 1996

14- Nikki Keddie, *Iran: Understanding the Enigma*, www.iranchamber.com

15- 40 Santa Clara L. Rev. 819, Women's rights in Iran: What can the international Human Rights System do? Maryam Javaherian

16- Alison E. Graves, *Women in Iran: Obstacles to human rights and possible solutions* American University Journal of Gender and the Law, 57, (Fall 1996)

However, it has to be said that not all women were seeking the so-called westernized picture without hijab and equal rights. 17 As time passed some women decided to go back to the traditional attire. Both camps enjoyed freedom of choice. 18

iii. Women's role after the Islamic Revolution

In 1979, another major change in the role of women occurred: through the Islamic Revolution.

Women were forced to put on the *hijab* and at the same time they were guaranteed to be treated equally on the Islamic level. 19

But soon after the revolution promises given to women were taken back. While many women did not mind the dress-restriction, conservative clerics imposed Islamic law mechanically. 20

The Islamic government required not only the *hijab* for women, but went further and forced all female members of the courthouses out of their jobs, did not allow women to seek a divorce or decide over their family planning. Even though women had a tremendous role in the Islamic revolution, they were only given supportive roles and no leadership positions in the governmental institutions. 21

17- Khomeini, *Die Frau aus der Sicht Imam Khomeinis*, p.220 and 28 Harv. J. L. & Gender 85, Law and Women's Agency in Post revolutionary Iran, Louise Halper: „Indeed, for many women, the unveiling order meant that women simply did not leave their houses because they would not be seen “naked” in the streets. Many women had previously claimed their right to enter the public space in order to shop, work, visit neighbors, or frequent the hamam, or public baths, on its women's days. For these women, middle-class and lower-middle-class, the Shah's unveiling order had the perverse result of making them more secluded and hence more dependent upon men, with less control over their own labor, less access to their own funds, and less mobility. The link between modernity and Western dress disserved these women.”

18- The Pahlevi Dynasty, www.persianmirror.com

19- Khomeini, *Die Frau aus der Sicht Imam Khomeinis*, p.14

20- Khomeini, *Die Frau aus der Sicht Imam Khomeinis*, p.22

21- Asghar Ali, *Iran between Liberalism and Orthodoxy*, www.ecumene.org

Hence, women started fighting for their own rights and requested a reform of the Islamic movement. ²² A Persian woman's magazine published that, due to the wrong interpretation of Islamic verses, women rights were suppressed and improperly denied. ²³ But even within the Islamic movement the ideas of approaching an Islamic treatment were highly controversial. While Khomeini had the "old fashioned" idea of literal application of the Quaran, Shariati was seeking a more liberal and educated approach; emphasizing on the education of the Iranian people while applying Islam through interpretation and adaptation to the changed times, and Motahari asked for a literal interpretation. ²⁴

b. History of Islam

Islam tried to reject the notion that women were objects for the male society. Instead women are described as the nurturer of the public and the protector of humankind. ²⁵

Arabic society would call "son-less" families *abtar*, meaning the ones who will not continue. But Islam rejected such a notion. As an example, when Prophet Muhammad's son died at the age of two, the Sure Kauthar (108) was revealed, which secured the continuation of the family through female descendants. ²⁶

At a time when Arab society would bury their daughters alive, the Prophet would honor women in their role as society leaders. ²⁷ At a time when Arab society just thought that

22- Asghar Ali, *Iran between Liberalism and Orthodoxy*, www.ecumene.org

23- Mahsa Shekarloo, Iranian Women Take On the Constitution, www.merip.org

24- www.iranchamber.com, Monique Girgis „Awomen in pre-revolutionary, revolutionary, and post- revolutionary Iran“1996

25- Asghar Ali, *Iran between Liberalism and Orthodoxy*, www.ecumene.org

26- Nina Kristiansen, *Women's resources are wasted in Iran*, www.kilden.forskningsradet.no

27- Taghavi, *Stellung und Wert der Frau im Islam*, Fatima az-Zahra was involved from the beginning in the sociopolitical engagement of her father and her husband Hazrate Ali. She was used as a sample for the working and honorable woman. Mohammad would stand up as soon as she would enter a room and kiss her hands in front of everybody.

marriage is for reproduction purposes, the Prophet made it public that he was in love with Aishah, and wanted to marry her. 28

The Quran requires the consent of a man and woman in order to recognize their marriage agreement 29, which is based strictly on the Quranic verses. 30 It does not have to be in writing. However, since it states that two witnesses should be attendant, it is understood in most Islamic countries as a written and witness requirement for the marriage agreement. 31

Additionally the Quran regulates the situation of a woman at the time of a divorce. A *mehr* (dower), must be determined in the marriage agreement, and it is understood that this will become a woman's unconditional property in case of a legal separation. 32

While the Quran does not mention the right age for neither man nor woman to get married, it does mention that they *could* get married, when they reached mental and physical maturity. 33 It is common though that the age for girls is nine years. 34

II. Issue

The issue is whether the seeking of divorce for an Iranian woman would contravene with (a) the Iranian law and (b) the Islamic Law.

28- Richard Foltz, *Spirituality in the Land of the Noble*, p.320

29- 9 Tulsa J. Comp. & Int'l L. 319, Kristen Cherry, Marriage and divorce law in Pakistan and Iran: the problem of recognition and 28 Harv. J. L. & Gender 85, Law and Women's Agency in Post revolutionary Iran, Louise Halper: Marriage is a contract requiring *ijab*, offer from the woman; *kaful*, acceptance from the man; and *mahr*, consideration in the form of a nuptial gift, from the man as well. Additionally it is the man's responsibility to pay for the family household, while the woman does not have to provide for any household items or hand in her personal property. Until shortly, a woman did not have any legal rights to alimony, but since 1995 could claim one half of her husbands' income in case of a divorce.

30- Quran 2:282

31- see footnote 21

32- Quran 4:4, see footnote 21; The *mehr* can be determined through an agreement of the parties. It depends solely on personal decisions, social and financial standings.

33- 28 Harv. J. L. & Gender 85, Law and Women's Agency in Post revolutionary Iran, Louise Halper

34- see footnote 21

III. Rule

a. Rule based on the Iranian law

The Constitution of the Islamic Republic of Iran is strictly based on Quran and states the equality of the genders in one article and additionally in the Civil Code. ³⁵

i. Art. 20 of the Iranian constitution

“All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.”

ii. Art. 1133 of the Family Law Division of the Civil Code

A man can divorce his wife whenever he wishes to do so.

b. Rule based on the Islamic law

i. Sure 4 (Nessah): 128

And if a woman fears ill usage or desertion on the part of her husband, there is no blame on them, if they effect a reconciliation between them, and reconciliation is better, and avarice has been made to be present in the (people's) minds; and if you do good (to others) and guard (against evil), then surely Allah is aware of what you do.

ii. Sure 2 (Baqarrah): 237

There is no blame on you if you divorce women when you have not touched them or appointed for them a portion, and make provision for them, the wealthy according to his means and the straitened in circumstances according to his means, a provision according to usage; (this is) a duty on the doers of good (to others).

³⁵- Constitution of the Islamic Republic of Iran Article 4: “All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the fuqaha' of the Guardian Council are judges in this matter...”

IV. Analysis

a. Iranian constitution

i. Art. 20 of the Iranian Constitution

According to Article 20 of the Iranian Constitution women and men are to be treated equally. However, the article states that this treatment should be according to the law and does not mention that the genders have equal rights. ³⁶

The meaning of law is interpreted further in the sentence “... *in conformity with Islamic criteria*”, which means that the treatment is only equal and the basic principles are only considered in a given scope.

This interpretation however, is not the one given by the Quran, but is interpreted in the Preamble of the Islamic Constitution.

"The family is the fundamental unit of society and the main center for the growth and edification of human being. ... Not only does woman recover thereby her momentous and precious function of motherhood, rearing of ideologically committed human beings, she also assumes a pioneering social role and becomes the fellow struggler of man in all vital areas of life."

The contradiction in the article becomes clear when it is read parallel to the preamble. Sure enough the rights are given, but the woman is considered in her high role of motherhood and mentor for her family society.

³⁶- Constitution of the Islamic Republic of Iran Article 20: “All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.”

On the other hand, the preamble states:

“Through the creation of Islamic social infrastructures, all the elements of humanity that served the multifaceted foreign exploitation shall regain their true identity and human rights. As a part of this process, it is only natural that women should benefit from a particularly large augmentation of their rights, because of the greater oppression that they suffered under the old regime.”

The Islamic Revolution recognized the woman movement against the past regime and the important role and support from women’s side. ³⁷ Because of this it was stated that men and women will receive equal rights. However, it stated that each one of the rights will be *customized* based on the nature of the genders. ³⁸

Hence, even though it is not directly stated, the Islamic Constitution wants to give women more rights than they had during the Pahlevi dynasty and claims to go back to the “true” Islamic rules.

ii. Art. 1133 of Family Law Provision of the Civil Code

Article 1133 of the Civil Code clearly states that men should have the right to divorce their wives any time for any reason. ³⁹

The Islamic government repealed the Family Protection Act of 1967 at the beginning of the Islamic Revolution, giving men the permission to divorce their wives at will, engage in

³⁷- This can be compared to the role of women in the French revolution. Olympe de Gouges describes in *Rights of Women* about how men and women united have fought against the old French monarchy and succeeded with the Revolution, she feels that men betrayed women after the won fight. The claimed *fraternité* of the French revolution was not extended to the *sororité*. She does not want privileges, but simply the natural rights, which should be as the laws of nature and reason the only restriction to any dissimilar treatment of the sexes. While she concentrates on liberty, property, security and the oppression to oppression, she asks women to unite and puts the power for a change into their own hands. She points out that women who are not given the opportunity of administrating their lives, their wealth, and moreover their freedom, will be used by men and at a later time be blamed for their incapability. Concluding she argues that with an equal treatment of the sexes, a new government would never fail, since it would have the input and support of those who fought for it.

³⁸- Khomeini, Page 64, *Die Faru aus der Sicht Imam Khomeinis*

³⁹- Civil Code of the Islamic Republic of Iran, Chapter 2 (Family Law)

polygamy, automatically secure the custody of children, and, through divorce, repudiation, and similar measures, threaten the economic security of all women, regardless of class or social standing. 40

The requirements for a woman to seek a divorce are conditional and have to be argued accordingly: The husbands consent to divorce or a pre-marriage agreement to have the right of divorce. 41

The government has declared a Twelve-point model marriage contract, which gives specific reasons for women to seek a divorce (e.g. illness, lack of sexual interest, denial of maintenance duties etc.). However, the use of this document is not mandatory. 42

The government defends the statute by arguing that it is a man who has to provide financial aid for the woman, and that it is the man who loses his money. Based on this it should be the man who could seek a divorce and not the woman, who should only be seen as the nurturer of the family. 43 Additionally it is said that if a woman had the right it would be easy for her to become rich very quickly: They would continue marrying rich and divorcing. 44 The statute finds further support in Article 1105, which declares that it is a man's exclusive right to be the head of the family. Article 1108 could be used as additional support regarding the after-divorce situation and the payment of maintenance, which would not apply if the woman did not fulfill her duties.

40- Art.1130 Civil code of the Islamic Republic of Iran Chapter 1 (Family Law): *In the following circumstances, the wife can refer to the Islamic judge and request for a divorce. When it is proved to the Court that the continuation of the marriage causes difficult and undesirable conditions, the judge can for the sake of avoiding harm and difficulty compel the husband to, divorce his wife. If this cannot be done, then the divorce will be made on the permission of the Islamic judge.*

41- www.safir-france.com/general/conf/2007 "Les impasses et les contradictions du droit iranien sur la condition des femmes"

42- 40 Santa Clara L. Rev. 819, Women's rights in Iran: What can the international Human Rights System do? Maryam Javaherian

43- Article 1102 declares that after the marriage contract has been signed by the parties, each of them will be bound to fulfill their marital duties. The duties are not listed explicitly in certain statutes but are implied in some of the following. E.g. Article 1106 regarding the maintenance of the woman or Article 1108 regarding a woman's duty to fulfill her duties without legitimate excuse.

44- 28 Harv. J. L. & Gender 85, Law and Women's Agency in Post revolutionary Iran, Louise Halper

This statute results in divorces without the knowledge of the woman and no further right for financial support or child custody. ⁴⁵ It is supported by the existence of Ta'ah concept, which diminishes women's most fundamental right and argues with the custom of women's inferiority. ⁴⁶

Iranian women, like the daughter of Ayatollah Aliakbar Hashemi, Faezeh Hashemi, and additionally Kadivar, Ayatollah Mohajerani's wife tried to challenge this statute, as it clearly does not have any compelling ends. ⁴⁸ The latter one was accused of taking men's right to divorce away and insulting the Quran. ⁴⁹

On the other hand Article 1156 declares that only a woman, whose husband is continuously absent, may ask a court for divorce. ⁵⁰ Article 1129 gives women the right to seek a *cancellation* through the judge if her husband does not fulfill his duty to pay for her maintenance and supplementary Article 1130 gives her the right to ask for cancellation through the judge if the continuation of the marriages is difficult and causes harm. ⁵¹

45- 28 Harv. J. L. & Gender 85, Law and Women's Agency in Post revolutionary Iran, Louise Halper

46- Azizah Y. al-Hibri, "Deconstructing Patriarchal Jurisprudence in Islamic Law", GCRF Page 224

47- 40 Santa Clara L. Rev. 819, Women's rights in Iran: What can the international Human Rights System do? Maryam Javaherian

48- http://www.iran-press-service.com/articles/elections_mirhosseini_13200.htm and

<http://www.globalsecurity.org/wmd/library/news/iran/1999/15-120499.html>, Faezeh Hashemi is a highly modern woman, who presently resides in Brussel, Belgium, and Tehran, Iran. Even though she does wear the traditional tshador while in Iran, she challenges every unequal treatment of women and formed numerous women groups to support the freedom of Iranian women. Her women rights newspaper zan (woman) was banned in 1999 after it cited the Ex-Shah's widow.

49- http://www.iran-press-service.com/articles/elections_mirhosseini_13200.htm, "She requested that... Art. 1133 ... 'should be changed under the guidance of the ulema and according to the requirements of the time.' This remark caused uproar. She was accused of 'wanting to take away men's right to divorce' and of 'insulting the Quran'. She was denounced by the Shiraz Friday Prayer Leader, and there were rumors she would be charged with heresy. Kadivar did not get into the Fifth Majles, even though she won the third highest vote in the first round of elections.

50- Art. 1156 Civil Code of the Islamic Republic of Iran: Article 1156 - The wife of a continuously absent husband whose whereabouts are unknown, if divorced by a judge, must observe uddah for death, starting from the date on which the divorce was granted

51- Article 1129 Civil Code: If the husband refuses to pay the cost of maintenance of his wife, and if it is impossible to enforce a judgment of the court and to induce him to pay the expenses, the wife can refer to the judge applying for divorce and the judge will compel the husband to divorce her Article 1130 Civil Code: In the following circumstances, the wife can refer to the Islamic judge and request for a divorce. When it is proved to the Court that the continuation of the marriage causes difficult and undesirable conditions, the judge can for the sake of avoiding harm and difficulty compel the husband to divorce his wife. If this cannot be done, then the divorce will be made on the permission of the Islamic judge.

Harm is not defined in relation to a divorce, but in Chapter 1 of Book7 in relation to a marriage cancellation. 52

Hence, none of the statutes give an explicit right to the woman, but “...*the wife can refer to the judge applying for divorce and the judge will compel the husband to divorce her.*”

c. Islamic Law

i. Sure Nessah: 128

While interpreting Nessah: 128, Scholars are divided into five different groups: (a) Divorce through Islamic law is impossible, (b) Only death can divorce people, hence the word should be abundant, (c) Only a man can seek divorce, a woman can not, (d) While the marriage constitution is holy and should not be separated through humankind, in some cases each of the marriage partners should have the unlimited right to divorce, and (e) the marriage contract is holy, and the family is the most important institution of a health society, in case of disagreements and an impossibility for the continuation of the marriage, an arbitrator should be asked for advice. Afterwards each of the marriage partners should have the same unlimited right to seek a divorce. 53

Nessah: 128 states that a divorce should be avoided if possible. Man and woman should try to keep the family together and see advice form an independent arbitrator. 54 This can be supported by Nessah: 35 “*And if you fear a breach between the two, then appoint*

52- Article 1121-1132 Civil Code of the Islamic Republic of Iran state that a woman can ask the court for the cancellation of the marriage if her husband is impotent, has mental or other physical illnesses. But, like the divorce cases the woman does not have a right to ask for the cancellation.

53- Motahari Page 88/89

54- Nessah:128 “*And if a woman fears ill usage or desertion on the part of her husband, there is no blame on them, if they effect a reconciliation between them, and reconciliation is better, and avarice has been made to be present in the (people's) minds; and if you do good (to others) and guard (against evil), then surely Allah is aware of what you do.*”

judge from his people and a judge from her people; if they both desire agreement, Allah will effect harmony between them, surely Allah is Knowing, Aware.”.

Generally a divorce is seen as a failure from both parties to discharge their martial duties and to end in peace, kindness, and compassion. This can be supported by Nessah:19, which states that no man should try to keep his wife against her will: *“It is not lawful for you to try to hold your wives against their will, and neither shall you keep them under constraint with a view to taking away anything of what you may have given them...”*. It refers to Talaq: 2 *“So when they have reached their prescribed time, then retain them with kindness or separate them with kindness,...”*.

ii. Sure Baqarah:237

As the longest sureh in the Quran, *Baqarah* is the index for the following Sureh. It does mention divorce, and refers to *Nesah* (Women) and *Talagh* (Divorce). Additionally it states the after-divorce situation and men’s duties towards their ex-wives regarding child support and maintenance.

Baqarrah: 237 has to be read parallel to Baqarrah: 236, which states that it is not a blame to seek a divorce *“There is no blame if you divorce them...”*. 55

When a husband acts irresponsibly toward his wife, she is permitted to take matters into her own hands and file for divorce; she does not have to wait for him to free her. The wife's right to ask for divorce does not have any time limit.

55- Baqarrah: 236 *“There is no blame on you if you divorce women when you have not touched them or appointed for them a portion, and make provision for them, the wealthy according to his means and the straitened in circumstances according to his means, a provision according to usage; (this is) a duty on the doers of good (to others).*

The rights of a woman can be drawn from Baqarrah: 231 *“then either retain them in good fellowship or set them free with liberality, and do not retain them for injury, so that you exceed the limits, and whoever does this, he indeed is unjust to his own soul; ...”*. This can be supported further with Baqarrah: 232 *“...And when you have divorced women and they have ended-- their term (of waiting), then do not prevent them from marrying their husbands when they agree among themselves in a lawful manner.”*

One could argue that none of them gives women the explicit right to a divorce. However, it is evident that a woman and a man have to be in mutual consent regarding a marriage contract. It is proven that based on Islamic law it is actually a woman who makes the offer and hence the marriage proposal.

Therefore, it would not be possible that she has the right to get married, but not the one to end the marriage or at least agree with her husband to end the marriage agreement.

Also the fact that numerous *ayeh*, e.g. 2:241 refer to men making reasonable provisions for their divorced wives, should be seen as an indication for the aim of emancipation and equal rights. 56

Conclusion

In conclusion it can be said that based on the Islamic Constitution a woman should be treated equally to a man, and hence she could file for divorce.

However, the Preamble states that the Constitution is based on the Quran, which does not mention a divorce strictly from the woman's side, but speaks about the mutual

56- Quran, Baqarrah: 241 *“And for the divorced women (too) provision (must be made) according to usage”*

agreement of the parties to get a separation. The Quran states at several points that men and women should be treated equally and those men should make provisions for the time after the divorce. Furthermore it clarifies the financial and mental position of women regarding that time. The Civil Code, on the other hand, speaks only about men. Hence, Article 1133 of the Civil Code contradicts to the Islamic Law of the Quran and additionally to the Iranian Constitution.

Women actually do try to change their situation and are aware of the injustice being done. There are many women like Parisa ⁵⁷ who try to collect signatures to repeal the discriminating laws against women in Iran.

Women like Faezeh Hashemi are thrown back into the traditional boundaries. ⁵⁸ But exactly these women prove the point that religious Iranian women try to solve the law within the religious framework, and bringing arguments against the unequal treatment with Quranic verses. ⁵⁹ As long as the political scene will be mainly man dominated, women will be seen as threats to the wrong application of the constitution and will not be able to seek any justice.

While it is obvious that the statute is not in accordance to the constitution, and the application of the law changes for the genders, the encouragement for women to be patient and to continue with their battle for justice and equality does lie within the Quran (*Al-Asr*):

“... truly man is in loss, except for those who have faith and do righteous actions and urge, enjoin, each other to the truth and urge, enjoin each other to persistence, determination.”

⁵⁷- http://news.bbc.co.uk/2/hi/middle_east/6426087.stm

⁵⁸- <http://www.globalsecurity.org/wmd/library/news/iran/1999/15-120499.html> 12 April 1999, Volume 2, Number 15

⁵⁹-Azizah Y.al-Hibri “Deconstructing Patriarchal Jurisprudence in Islamic Law” GCRF Page 221

Research List:

IX. Books

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