The Analysis of Marriage Barriers in Imami Jurisprudence and Law of Iran and France

Mohamadreza Habibi Mehr, Mehran Jafari, Soraya Etedali Pajooh

1Assistant Professor, Yasuj Branch, Islamic Azad University, Yasuj, Iran.
2Assistant Professor, Yasuj Branch, Islamic Azad University, Yasuj, Iran.
3Department of Agronomy, Yasuj Branch, Islamic Azad University, Yasuj, Iran.

ARTICLE INFO
Article history:
Received 25 September 2014
Accepted 22 November 2014
Available online 1 December 2014

Key words:
Barriers Marriage Jurisprudence
Imami, law Kinship France

ABSTRACT
Background: The legal institution of marriage, like other institutions has its own arrangements, conditions, characteristics and barriers that each of them can be topic of article, thesis or a book. They can be investigated from the perspective of jurisprudence and legal review. What can be shown in this dissertation is explanation of precision of marriage barriers in 3 areas of Jurisprudence, law, French law. At the beginning, we deal with terminology of the topic of this dissertation and then Lexical concepts and key vocabulary terms of dissertation are examined. Then the bans which are due to the sanguinity and different kinds of immixture kindred, and various types of kinship and lineage as well as ban due to foster definitions and its definition, condition shown in the law and Jurisprudence will be discussed. Method: The ban due to casual relationship, implication and its accrued effects on it and the meaning of and different variety are examples of discussed topics in another section, respect from acts and decrees and statement of accounts as well as heresy and ban due to sex union can be observed. In another part, temporary barriers such as the collective prohibition, Ifram, third and ninth divorce advocated number and discussion of polygamy and ban due to young age and province of marriage as well as prohibition from blasphemy, apostasy and insufficiency and its related subcategories are discussed.

INTRODUCTION

In marriage context, there are problems and issues that should be considered. And it is necessary to discuss and have research on them. One of these issues is marriage barriers which means the legal barrier through holy giver and cause that marriage with these barriers considered as unauthorized point. However, more or less this fact is paid attention in many countries. And some barriers for the marriage will be shown. The topic of this dissertation is marriage barriers in Jurisprudence and law that should be investigated. Especially when there are differences between our laws in Iran based on pure Islamic Jurisprudence and the law of other countries. Some different topics include kinship, casual, foster and their roles each one in marriage barriers. And investigation of some implications like adultery, sodomy, divorce, infidelity, quantity as the marriage barriers as well as the investigation of mentioned evidences regarding the Jurisprudence and law are factors which will be examined. However, these issues besides other topics like alimony were discussed in grand juristic’ books. It is hoped that the law will be given here for comparison.

Statement of problem:

Definitely, the issues addressed by human are social life that first, has taken placed the family establishment through the tradition called marriage that can be found among different religions and various ethnic groups. Although there are differences in its trend, anyway this important institution can cause human survival and pave the way for peoples’ progress and prosperity. In this area, family, some issues are rose which play important roles in family originality and its survival. And it specified the position of men & women for strengthening this love and affection institution.

Although these were shown in legal obligation, Men and women’s roles as the main component of this focus is unforgettable. Especially, when our audience are followers of holy Islam and the comprehensive school of Shia duodenaled. Therefore, we must pursue the goals of the raised issues. Until families carefully have taken

Corresponding Author: Soraya Etedali Pajooh, Department of Agronomy, Yasuj Branch, Islamic Azad University, Yasuj, Iran.
Contact: 09133809866 E-mail: sajad.malek68@yahoo.com
steps in their self-determination. It would be one of those issues which can help and solve men & women’s problems.

Discussion about marriage barriers being the main goal of raising this problem is that families can protect themselves from possible slips by knowing these barriers. In this way, dignity is preserved and the society will stay safe from Sensuality, debauchery and as an anti-anxiety agent, causing physical and mental health as well as strengthening this holy institution in the society. Moreover, it provides solutions for the centers that want to act at the beginning of marriage to teach young couples marry. In addition to scientific objectives, including the determination of the relative kinship and casual, etc, and investigation of religious reasons of mentioned concept is comparison with law. It is hoped that these goals in practice and implementation phase.

Conditions of marriage:

In Iranian law, causal relationship in horizontal line does not prevent marriage. But French laws do not prevent marriage between casual relatives. (Marriage with brother or sister in law) is forbidden. Provided that marriage is dissolved by divorce. (Article 162 of the French Civil law and the first law of July, 1914).

The purpose of legislation from prevention of this marriage is that brother or sister in law cannot disrupt it. and after that try to get married with sister’s husband or brother’s wife. Obviously, in the case of dissolution of marriage will not be a strong partner of the fear of collusion. For this reason, marriage between mentioned people in the case of partner’s death is not only forbidden but also encouraged since if widow married with his sister in law in fact enter a person in his family who has special affection to her nieces and nephews and can be a good mother for them.

In French law, intercourse out of marriage is no impediment to marriage between a man or woman with casual relatives of the spouse.

About casual relationship, in horizontal line, the French law is somewhat more strict than law in Iran. In fact, the law of Iran does not prevent the marriage between man / woman with their brother or sister in law. It only said that it is impossible to married 2 sisters or one sister and one niece/nephew simultaneously. What is forbidden is having 2 wives inbred whether in the first or second or third rates. But in France the marriage between relatives in law in horizontal line is permanently forbidden not temporarily. Thus, in French law, men cannot get married with their sister in law after divorcing his wife. Even if his first wife permits. And women cannot marry with their brother in law after divorcing from their husbands.

Marriage barriers in French law:

Marriage barriers in law of France are divided into relative and absolute ones. The absolute barriers are those which prevent marriage in an absolute way like being underage or having the second partner while having the first one that is revoker of contract and is an example of kinship relation barrier.

Other non existing barriers in civil law:

The law of before revolution which were in accordance with the rules of the church, there were 6 points that were included in marriage barriers which were decreased to 3 points.

Civil death:

Condemnation to eternal punishment cause civilian death that is in accordance with article number 225 B.C. In the past, when everyone married, his marriage was considered invalid. Moreover, civil death was regarded as marriage barriers. This rule was abolished on 31 May 1854,( article 225 of civil French law)

According to article 298 BC Old:

This article has predicted that if divorce has been granted due to adultery, the guilty couple cannot marry his/her accomplice.

This was a very wise decision because it does not let couples for themselves with wishes of marriage with someone, commit adultery and afterward get divorce decree and in this way make their illegitimate relationship into legitimate one. But due to improper or bad usage of this article by the courts, eventually the legislator due to the pressure of family opposition especially Paul and Victor Tournmargarit, delete this article on 15th of December.

The existence of previous divorces among future couples:

If the couple were divorced and demand to remarry after divorce, article 295 BC. Old banned it. Its main reason was that the main reason was that the boubou and Trvnshh seeking to enhance their authority as Montesquieu: Allowing the breeze to take divorce case results in this point that marriage will not beguiled.

This reason is not acceptable. Since after the revolution, remarrying the divorced couples was practically observed. However the oppositions of the mentioned article announced that this prohibition makes the future life of children and even the institution of family at risk. Therefore, the law of 27, 1884 permit the divorced couples
remarried together. Anyway, if one of the couples remarried with another person and due to his/her desire to the first couple, the ban was still exists.

But the reformations of 4th January 1930 make the barrier simpler; for remarriage of divorced couples, appropriate procedures will be necessary and does not mention any other prohibition. However during the reformations of 13th July of 1965, it has been announced that the courts can issue the new regime of the family to remarry after divorce based on confirmation of family benefit and considering all needs.

**Barriers in current civil law of France:**

**Prior marriage which is not terminated:**

Article 147 BC. D. suggests that ((it is not possible to have the second marriage before the dissolution of the 1st marriage.))

The French law only accepts monogamy and prohibits the polygamy. The guarantee of implementation of this article had been a crime in previous criminal law of France. By the changes to article 340, 1933, regards it as a simple one. That was sentenced to disciplinary punishment (1 year in prison and a fine of 300 million francs as a fine). After approving the new law of punishment, the mentioned punishment has been changed to articles 433-2. And the punishment has applied by correctional courts. And if the marriage was dissolved due to divorce, death or absence of partner, each of couples can get married for the second time. So it means that as long as the decision to divorce is not yet clear, the second marriage is impossible. If, due to the absence of one of the partners in accordance with Article 88 BC given the death sentence, another spouse can get married and if the first partner comes back, the 1st marriage would not valid anymore.

This ruling was done by Tribunal de grande instance and all the results will be to death.

**Quantity:**

Article 228 B.C says: ((wife can get married only 300 days after the dissolution of first marriage.)) French legislators have expressed that this term of this situation is due to the relationship of father and paternal lineage accession. And 300 days is a maximum term of carries. And if the wife gets married exactly after the husband’s death and a 9-month baby will be born, there would be ambiguity in the accession of his parentage.

This above article is adapted from old version of French law. The mentioned article is true for death, divorce, absent missing. The jurisprudence of the cancellation or annulment of first marriage considers the sentence true one.

The previous regime had three main reasons for condition of quantity: unkindness that comes with second marriage.

Incorporation of morality and lineage, but the two main prime reasons have lost their properties by the changes and evolution of morality. For this reason, the law of 11 July 1975 has made concessions to this general rule.

1-in accordance with articles 228-2, if the woman gives birth after her husband’s death, she can immediately gets married since there will not be mixed ancestry and there would be no need for quantity.

2- if the woman brings medical certificate showing non-pregnancy

3-when the President of the Court revoke the above term with good reasons. In a way that he notices she had not lived with her husband during 300 days before his death. The legislator wants the child to be born legally in the society. For this reason, with the adoption of the provisions of Sweden in 1930 it can be said that ((woman can remarried even in pregnancy period)).

The mentioned rule can be found in Peru as well as Switzerland.

4-about the dissolution of marriage due to divorce: if the couples end their relationship and separate their residency for a long time or through certificate this point will be approved for the judge, the divorced woman can immediately get married. (regarding the divorce, the kind of divorce which is mutual consent of both parties.) Since the divorce process typically lasts more than 10 months, but regarding the divorce due to ((separation of marriage life)) the woman can immediately gets married. These provisions are apparently similar to methods of legislations law of Russian and Angulaslsun that do not know any quantities.

**Immixture kindred:**

The rules of churches have many prohibitions regarding this part. If these prohibitions do not exist, the marriage between members of families will be strengthened. And physical as well as ethical problems can be found. About physical problems: Consanguineous marriage scientifically will create great genetic problems in the long run as this has been proven by experimental methods. Ethical problems: Both sides make sensitive open relationship and with the wish to be able to change their liaison into legitimate relationship and marriage. Liaison and corruption among the kinship will increase. The rules of church have forbidden some relations like spiritual kinship relation born of in the case priest, treaties and religious votive due to ethic.
The relation that occurs between the relatives have degrees of ban, adultery between individual who are closely related is called incest that in France, in its new criminal law no penalties are considered. The current law of France has strict prohibition of proximity which is in 3 titles.

**Differences in the sanguinity of France and Iran:**

In French law the causal relationship in general line prevent marriage. Whether sanguinity coupled with legitimate or illegitimate or bogus marriage. In Iranian law the attention is paid only to legitimate relation. This affinity can be the result of inbreeding, but the affinity of synthetic (adoption) is not effective to prevent the marriage.

In French law the for the purpose that casual relationship prevents marriage, it should be based on marriage but it does not make any differences that intercourse happens or not. In contrast, in Iranian law it is the result of intercourse than marriage.

This point is really clear in part 3 of article 1047. Moreover, article 1055 says that adulterous intercourse in doubt from perspective of marriage prohibition have similar effects to intercourse in marriage.

Here there are many similarities between law of Christ and Iranian law. In Christ law, the casual relationship between the relatives have degrees of ban, adultery between individual who are closely related is called incest that in Christ law, the casual relationship in general line prevent marriage. Whether sanguinity coupled with legitimate or illegitimate or bogus marriage. In Iranian law the attention is paid only to legitimate relation. This affinity can be the result of inbreeding, but the affinity of synthetic (adoption) is not effective to prevent the marriage.

In French law the for the purpose that casual relationship prevents marriage, it should be based on marriage but it does not make any differences that intercourse happens or not. In contrast, in Iranian law it is the result of intercourse than marriage.

Regarding being the prevention of marriage, some of jurists pay attention to rate of intercourse which has regressive effects for it. And they say that if a person has a sexual relation with his mother in law, his marriage with his wife is not valid anymore, however, Iranian legislators accept this idea. They believe that intercourse in doubt and adultery can prevent the next marriage but it does not invalidate the former marriage.(article 1055, civil law of Iran).

**REFERENCES**

[4] ZHVsran, without the lessons of the French civil rights statute, without the
[7] Qom, 1, of the comprehensive Alshhat, such as consistory, N., 1382, during the preliminary civil rights, publication of consistory, N., 1382, civil rights, family, publishing company in collaboration with Jan Borna, Volume 1.
[10] M.C., 1389. The Penal Code, published by the meeting scholar groom, S.m, 1379, to examine the legal rights of marriage and family dissolution, diffusion of Islamic Sciences.
[17] Ibn Hassan Bagher, M., 1389, Jewelry Alkmam per laws of Islam, Islamic books were
[18] Ibn Husayn ibn Abdul Aal Alkry (second investigator), AS, 1408 1411, Comprehensive Almqasd per
[28] Ibn Muhammad Mahdi Naraqi, A., 1418, documentary Shia per provisions of Sharia, Al-prophet organization Lahya’ Altras.
[29] Ibn Mansur ibn Ahmad (ibn Idris solution), A.m, 1410 1411, Alsrayr Alhavy Alftavy Tahrir, Islamic Publishing Institute, Volume 2.
[34] Ansari, M., 1379, Almkasb per Alrza treatise, the religious press, Volume 3.
[38] Ibn Athir Jzry, M., 1405, a comprehensive qualitative traditions principle Rasul, Dar Al-Kafr, Volume 11.