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ABSTRACT

The Supreme Judicial Council has issued a circular letter on 1984 stipulated Marriage registration offices obliged to include 12 definite provisions into marriage certificate. If couple agree on it or one of them will be proved, the wife can divorce through this power of attorney. The common point of twelve provisions and the religious and legal base of all of them is severe difficulty and hardship for the wife which is caused by the husband involvement in one of these provisions. The literal meaning of Addiction is getting accustomed and habituate. So, the addiction under discussion in this survey contained all kinds of habits which disavow responsibility in managing the family even though addiction to narcotics is emphasized due to being abundance. The husband’s addiction enfeebles the morals in family at last and corner the wife and children and causes vanishing the wife’s family and social position and finally causes very fatal losses on the family. Therefore, the wife has to give up hope about the common living and will ask for divorce. The author tries to define the addiction and deleterious addiction for survey of seventh provision of religious and legal dimension. Then, he investigated the addiction in Islam to know what kind of addiction damages domestic life and makes the life hard for the wife and finally after analyzing the religious and legal basis, researched the courts votes in this regard and at the end of survey, reviewed the subject comparatively.

INTRODUCTION

1. The first Section:
   The religious survey of the seventh provision:
   1.1 The meaning of Addiction:

   Addiction is a word meaning getting accustomed, habituate, acclimatize, and it also means a person get accustomed to something in a way that leaving it causes illness and disease for him or her along with physical and mental disorders and pressures and at last he/she becomes addict.

   Considering above mentioned meanings, the author believes that addiction – contrary to traditional believes – does not merely mean dependent on narcotics. He considers two meanings for addiction for clarification:

   Addiction in general meaning: It means dependence and getting accustomed to everything maybe addictive for example severe dependence to alcohol, gamble, wager, sleep, playing with the birds like dove, and these days, addiction to computer games and internet.

   Addiction in particular meaning. It means the same meaning that people think when hear the word of “addiction” i.e. dependence to narcotics.

   But what does the addiction in 7th provision mean? Is its general meaning considered for lawmaker or only addiction to narcotics is sufficient for divorce of the wife?

   In reply, It has to be mentioned that as though the surveys shows more than 60% of divorces is due to husband addiction to narcotics and it shows the role of dependence to narcotics in breaking up the relationships between the couples but studying different cases and court votes demonstrate that the human habit-forming temperament enable him to get accustomed to everything, everyone, even food, a specific form of cloth and different customs, in a way that leaving them will be difficult for the addicted and consequently, it causes
inconvenience and hardship for his family particularly for his wife, deliberately nowadays that internet and virtual world blended into life. Addiction to internet or computer games is being known as a proof of addiction gradually and complains of women against some of men demonstrates the addictive use.

Therefore, the meaning of addiction in this survey is the addiction in general meaning which is composed of dependence and getting accustomed to everything for example addiction to narcotics.

2-1 Addiction in Islam:

It can be understood by the general rules and principles of religion that addiction is unlawful in any kind which has great disadvantage.

A survey of Quran verses demonstrate that the self-defense rule which is an innate rule necessitates human not to put himself to death. Following verses emphasizes on this rule:

1- Verse; the documentation of this verse regarding addiction is that according to above mentioned verse, putting yourself to death is an lawful affair and deep dependence to everything which causes hardship ( and in some cases like narcotics addiction ) is a proof for self-slaying, so according to above verse it’s unlawful.

2- The murder verse. In documentation of this verse, the researchers mentioned that using narcotics – addiction in particular meaning – contributes to suicide which is unlawful, So using narcotics has been prohibited by this verse.

3- The verses prohibiting wasting. for its documentation to addiction it’s worth saying that according to these verses wasting and extravagance have been prohibited and addiction in any form and kind, spending properties or life in a wrong wary and for sin is unlawful.

Some of anecdotes have referred to addiction in its particular meaning and prohibit it, in most of them the words “ henbane and hashish ” has been used. For example the prophet said ” My people will use something called henbane someday. I hate them and they hate me as well. “

And some other anecdotes prohibit every kind of dependence which can call it addiction. For example Imam Hasan Askari said. It’s too bad for believers to get accustomed of something humiliating. He also said. quitting a habit of addicted person is something like miracle. Two anecdotes reproached directly habiting extremely to everything which causes harm and loss.

It can be perceived by the jurisconsults’ speech that harmful addiction is unlawful because it causes masochism and some of them agree on this issue and some others speak about masochism habits without reference to habituate and harmful habits. The Sunnite jurisconsults also gave a sentence regarding harmful addiction and masochism.

3-1 What kind of addiction is harmful?

It’s obvious that each habit and wont is not prohibited by religious and common law, for example someone gets used to read Quran or someone becomes inured to help others. It’s obvious that such habits are not also prohibited by religious and common law but also they are moral virtues.

But the addiction which allows the wife to get divorce is a kind of dependence and overhabit to something bothering the wife and as we consider from the 7th provision of marriage certificate severe dependence causes to divorce which annoy the wife so that she no longer can tolerate.

Therefore, If the addiction is considered as its particular meaning i.e. using narcotics, it has to be mentioned that each person who use them is not addicted. Those who use narcotics divided into three groups but there are persistent addicted among them who make the life hard for their wives and as a result convince her to get divorce.

The user for amusement

- He uses drugs for amusement and in special occasions.
- He can quit it whenever he wants.
- He feels happy and don’t overuse and has an ordinary reaction to the drugs.
- He has enough willpower to quit or control drugs.

The persistent addicts

The persistent addicts can never become users for amusement. These kind of users enjoy so much from using drugs. It helps them to tolerate the life or escape from it. Drugs help them to find a fake personality and pretend to be a person who aren’t in reality. The brain of actual addicts enjoy of these severe and abnormal feelings and look for more enjoy. They use drugs more and more due to temptation. The brain gets used to using drugs and is depend to them for normal activity.

As you considered, in the group “ The user for amusement “ the addiction doesn’t damage to family very much, So the wife can not divorce according to 7th provision of harmful addiction. But regarding the second group, it can jeopardize the relation of couple and the life become so difficult for the wife and she insists on divorce.
But there is an important issue here and it’s medical use of drug which is allowed by religious law but the author believes that it’s also prohibited by law of common.

To emphasizing above issue, There are some religious decree that “ Is it lawful to use drugs for curing the pain?” There are some responses as follows.

Mr. Mohammad Ali Araki. It should be treated like the other necessities.

Mr. Seyed Ali Khamenei. It’s ok if the physician prescribes.

Mr. Mirza Javad Tabrizi. Non-alcoholic substances can be used for treatment.

Mr. Jafar Sobhani. It’s allowed only for therapy.

Mr. Fazel Lankarani. It’s allowed for treatment if it doesn’t lead to addiction.

4-1 The religious basis of Divorce:

As Islam emphasizes on protection the family, whatever threaten it is heinous. It’s obvious that the addiction ruins the young generation and makes the family weaken and vanishes religiousness and leads to perish the addict soul and annoys the others.

But as it has been mentioned all kinds of addiction is not heinous and the addiction is only harmful which make the life hard for the family and the wife, So, she is allowed to get divorce. Sheikh Toosi mentioned in the book Alkhalf. If a person use drugs or drink alcoholic beverages, his wife can divorce.

It can also be said that as the addiction is a kind of wastage in properties or even in body and soul and is heinous intellectually and some jurists called the waster fool and considering other rules for addicts, it’s not improbable for addicts be treated as fool people. So the wife of addict person can divorce due to the hardship he made.

2- Second chapter:

The legal survey of 7th provision:

As we mentioned in previous chapter, Addiction means getting used or getting accustomed and as though addiction means habit or being dependant to something even the cases which are not prohibited religiously or lawfully like getting used to a particular manner or behavior or even to food or beverages, but it should be mentioned that those groups of habits which we need them for continuance of life like breathing and sleeping are normal habits but the habits which we are talking about called “ co-dependence” in psychology that the attention of addict is focused on it so that his connection to beliefs, thoughts, feelings, choices, needs, experiences or even the environment will be cut off.

Therefore, the concerned addiction is recent habits which disavow any responsibility in managing the family and the wife and children will be brought to bay and vanish the domestic and social stand of wife in society and at last it causes so fatal damages to the family and the wife has to give up hope about joint life and asks for divorce.

For legal clarification of above mentioned provision, we should at first consider what the meaning of lawmaker was by “ harmful addiction “ in this provision and then consider what kind of addiction damage domestic life and make the continuance of life hard for the wife and after that examine the legal basis of divorce on 7th provision and at last the court votes and comparative survey at the end of chapter.

What kind of addiction is harmful ?

The question here is what is harmful addiction in this provision ? for replying this question there is difference of opinions among judges and law scientists. some of them believe that the adjective “ harmful “ describes the addiction not avoiding and according to it all kinds of addiction are harmful because they influence on the family, but some other of judges and legal authors believe that each kind of addiction is not harmful and the wife can not use the provision for divorce and if someone who is addict has not any problem in procurement livelihood or hide his addiction from his family, we should not separate him from his wife. The advisory council of train and research deputy of judicial department accepted the first idea and believes that every kind of addiction is harmful. The author believes that the reason of council is that addiction particularly drugs addiction causes vanishing social position of family.

But despite of commission idea it has to be mentioned that every kind of addiction is not harmful but dependence is harmful which contains following figures.

- The structure and communication system of brain becomes abnormal.
- Distressed and anguish thoughts of missing brain sanity.
- Destructive defensive mechanisms.
- Rough and harsh characteristics and behaviours.
- Not able to quit drugs despite of pathetic subsequences – This state called Allergy.
- The brain needs addictive state furthermore – This state called yen.
To achieve previous joy, the addictive behavior should be repeated so that addict feels comfort physically or mentally in drug or alcohol addiction.

- Ignoring others and themselves.
- Missing communication with friends, family and society.
- Disability in doing ordinary affairs and activities.
- Being involved in legal problems.
- Missing the power of control or quit.
- Acting addictive behaviour will be in priority rather to other issues.
- Becoming indifferent to the life and thinking about suicide.
- The frequent but vain try for quit.
- Disarray and non-manageable life.
- Complete disappointment and disability.

So every kind of addiction is not harmful but those which damage financially or moral and ruin the human like drug addiction or alcohol or gamble.

2-2 What kind of addiction damage domestic life and make it hard for the wife:

When husband has been caught in an addiction which ruin family understanding and unity, the addiction is damaging.

According to the article 1102 of civil rule, the couple profited by some rights and obligations after marriage and according to the letter of article 1104 of the same rule, the couple should cooperate in family affairs and educating the children, so if the husband addiction damages wife’s rights like copulation, alimony, training children or disrupt the roles and domestic obligation in a way that increase women responsibility and the problems due to economic problem, addict unemployment, life monotony, lack of sincere relationship with the wife, make the woman stressful, it can be mentioned that this addiction damages domestic life and the continuance of life will be very difficult for the wife.

3-2 The legal basis of divorce:

Husband addiction is one of the main and important of difficulties of the wife which husband’s dependence to addiction and repeating it make very severe problems for the wife which the joint life of wife will be inexpedient with a man who is not able to manage it. So according to 9th verse of 8th article of family protection rule, year 1974 and also the provisions of the article 1130 the wife can divorce due to her husband addiction.

According to 2th verse of affixed amendment to the article 1130 of civil rule on 2002, if husband addiction to drugs or alcoholic beverages makes life difficult to his wife and damages domestic life or husband can not quit during the time of treatment, the court should force him to quit unless divorce can be done.

Although above mentioned provision has legal basis but since harmful addiction should be proved by wife.

1-Continuance of husband addiction since past to the time of issuing arbitrator; So if husband got involved in addiction and now he’s free or is quitting, husband complain is not accepted.

2-If addiction caused damages or healthy, financial or moral losses on addict and his wife, So his addiction will be proved for the court by examinations.

3-Domestic basis will be unstable and as the result the life will be intolerable. So according to these laws the wife can divorce.

4- The basis of domestic life becomes unstable and the continuation will be intolerable for the wife

Therefore, Wife can ask for divorce from the court with reference to article 1130-2 of civil law and article 8-9 of family protection law concerning articles 1119 and 1133.

Addiction to alcohols, gamble and drugs is crime in Iran and some punishments were determined for them, if a man gets involved in one of them and be punished then his wife can ask for divorce with reference to 9th provision.

4-1 The survey of subject in courts votes:

By virtue of written verdict No. 4385- 2001/12/28, branch 1720 of family court of Tehran, addiction of husband leading to wife rough-and-tumble with reference to husband remarks concerning addiction quit and commitment for not repeating which is a kind of confession to addiction, is determined as basis of divorce verdict. By virtue of written verdict No.1115-2002/04/05 and 440-2002/08/20 of Supreme Court, the above-mentioned verdict was approved despite of husband objection.

If husband is addicted to internet games and wife insists quitting it hasn’t any result, the court can issue the divorce vote for wife.

If the husband addicted to alcoholic beverages, according to verdict no. 3728-81/12/27 wife can divorce.
According to the case 492-94-72 of civil court of Tehran, if wife is addiction and it can be proved by the court, husband can divorce her.

5-2 comparative survey:
According to the article 14 of Egypt marriage law one of the divorce causes is addiction to alcohol, drugs and gamble.
The 7th verse of the article 319 of Afghanistan, wife can complain to the court by proof of her husband addiction and ask her husband to solve this problem is not she can divorce.

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