Comparative Study of the Requirements Inherent In Marriage within Iran and Egypt Laws

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ABSTRACT: Some of the scholars and lawyers consider parity and confidentiality as the inherent requirement of marriage. However, it is not possible to ignore the conflicts of ideas with respect to the instances of inherent requirements of marriage. The inherent requirements of marriage are the results and inherent effect of marriage where the goal and purpose of marriage contract is its development. Contradictory marriage requirement demolishes such an effect of the marriage in that the condition of contradictory requirement of marriage leads to the cancellation of marriage. It is of doubt what of the criteria of inherent requirements of marriage are. The present study endeavors to demonstrate the criteria and principles for identifying the inherent requirement of marriage which are in conflict among Iran and Egypt laws doctrine. To examine the identification for problem dealing with the requirements of marriage, one can take into consideration the marriage contraction denied by scholars who consider family formation, sexual pleasure and cooperation as the purposes of marriage. However, these elements are not regarded as the nature of marriage and they are the claimers of marriage occurring without their development. The clarity ad removing the conflict from the considered issues are possible through responding to the question of what are the inherent requirements of the marriage and what the solutions is. Is it a complex which his composed of some factors and each component is one art of it? If it is the situation, then what the relation for each part to the whole is. With respect to the complexity of the issue, a number of theories are offered and the reasonable perspectives is admitted. Since the difference within the inherent requirements of marriage has led to the differences in offering the instances of “the opposing condition of marriage” in Iran and Egypt laws, the aim of the present study is to review the conflict perspectives with respect to the laws.

Keywords: requirements of the marriage, marriage, Iran laws, Egypt laws

The Concept Of Condition And Types Of It

Although the civil not has not addressed its definition, one n consider it as the obligation and following commitment which is formed while assigning determined marriage along with the main commitment. Some scholar believe that the existence of law ion, legal terms is said to be a probable issue based on which the legal effects appear or it is a description committed by one of the marriage parties without the fact that its description is probable. Civil law of Egypt dealing with articles 265 to 270 has to do with the discussion of condition. He component of condition has to do with future which is not liable to occur, by its occurring depends on the commitment deviation. In case the existence of commitment depends on the occurrence of condition, then such a condition is called condition of probability or aware condition. In case the commitment existing by itself and its abrogation depends on the accordance of condition, then such a condition is called the abrogated condition.

There are three components of condition in Egyptian laws

Receptiveness: the condition should be based on the occurrence of future. Hence, in case the person obliges himself to pay for the findings of the lost thing, such an affair relates to the future.

Impossibility of occurring: based on the article 1 of act 286 of Egypt civil law, to ensure the probation condition, the object for the condition act should be excluded but takes part in presence and not that it is certain to occur. In other words, the condition should be impossible or occur. In fact, the basis of condition is the uncertainty in occurrence of condition. Hence, in case the act is possible to be occurred, then it is into regarded as condition anymore. In case the condition is possible to occur, then it is called rush and not the condition. As an instance, in
case the debtor does no embark on the determine commitment, then the commitment is of rush type since the use of the product section is a determined affair and not the probability. Hence, this is a rush affair and not the condition. The affair whose occurrence is impossible is not label to be considered as the condition. Hence, in case the committed devotes his commitment to something else which his highly regarded as absolute impossible, then one can say that no commitment is formed. As an example in case, if a person is committed to pay the reward for another person on the condition that he reaches to the moon, such an affair is considered as absolute impossible.

Lack of disagreement with public discipline and accepted behavior: the condition which contradicts to the public discipline is null and no absolute commitment rules in this situation. As an example in case, if a person makes the fact conditioning that his wife is not allowed to get married with another person, such a condition contradicts to the public discipline, but if the aim of such a condition is that the wife can treat her children I a right way, such a condition is acceptable.

It is feasible that the condition contradicts to the accepted behavior which is null in this case and the commitment decided on this condition will be excluded. As an example in case, if a person is committed to do illegal affair for being paid, such a condition is null due to contradicting to the accepted behavior.

**Types of conditions in Egyptian laws**

Condition of probation: according to article 1 of 265 civil law act of Egypt, condition of probation is the one whose failure or success depends on the occurrence of acceptance whose occurring is not certain. This means that the advent of commitment depends on the realization of condition so that is shown by the time of condition development. As an example in case, a father gives his hiba on the condition of marriage. In this case, marriage is regarded as a probation of condition.

Abrogation condition: based on article 2 of 265 civil law of Egypt: in case the decline relies on the condition, then such a condition is called abrogation of condition. As an example in case, the creditor ignores part of his right on the condition that the debtor pays the installment on the determined dates. The condition is this example is that of the abrogated since if the debtor delays in paying the installments, retaking of part for the right by the creditor is declined.

The condition is divided by two categories of corrupt and accurate

The accurate conditions based on 234 article of civil law:

The characteristic condition which deals with the quality and quantity of the thing being exchanged.

The result condition which is the development of work as a result in outer context. In case the achievement of the afore-mentioned result does not rely on specific equipment, then the assumed result will be attained by the time of registering it into the contract.

The condition of act either the act itself or abandoning it. What is meant by the within-contract condition is the third section here.

The afore-mentioned three-fold conditions are obligatory in case they are not corrupt.

**The corrupt conditions**

These types of conditions are divided by two categories:

Based on 232 civil law article, the corrupt conditions which do not cancel the contract are as follows:

The condition whose embarking is not feasible. As an example in case, if the contract parties make it conditional that the consulting party dedicates a published book to the other party and the second arty is not educated, then such a condition does not damage the accuracy of contract although it is cancelled.

The condition which does not accompany benefit or disadvantage. For instance, one puts n conditional form within the contract that the first party extracts water from the wall for one year and refills it again. Such a condition which does not guarantee the intellectual advantage is canceled but does not cancel the marriage contract.

The condition which is illegal either of Sharia respect or legal banned. Such as the case in which it is conditioned that the second party is not allowed to say prayers for six months or is responsible for driving the car without holding the driver license. Such a condition is cancelled but it does not affect the accuracy.

What is discussable in this situation is whether he first party is liable to cancel the agreement if the condition is canceled or not. It seems that following items are taken into consideration with respect to the afore-mentioned conditions:

First, when it comes to the case that the first party is aware of the condition corruption, one can say that since the person has made damage including acts, he should not be allowed to have the cancellation right. Since one can say that the cancellation is taken into consideration in the aspect that its implementation prevents the inclusion of damage. In case the damaged-person acts in a wrong way despite the fact that he was aware of the
possible repercussions, then he is the responsible. The person who acts in this way for several times should not be allowed to have the right to use. It is possible that one infers the verdict of the issue from articles 240 of the civil law as follows. The article states that “in case the condition gets impossible followed by its determination, then the person on whom the condition was determined can have the cancelation right: What is meant by the phrase “If it is perceived that it was impossible while assigning the contract” is that if the person under condition has the knowledge that the afore-mentioned condition was impossible within the assigning of contract, then no cancellation right would be allowed.

Second, with respect to the condition which does not have intellectual benefits, one can say that the inadequacy of the under conditioned person of the condition corrupt would not lead to cancellation. Since the omission of what dos not have advantage would not result in damage and loss.

Third, non-awareness of the condition which is impossible to embark on means that failing to embark on that condition certainly implies that the condition is impossible. Thus, the verdict of this issue on article 240 of civil law appears which emphasizes on the cancellation right for the under condition person.

Fourth, when it comes to the ignorance of the condition which is illegal, saying that the under condition person is ignorant of the illegal status of the condition assigned within the contract, it is similar to the act over which there is no power. Thus, the under condition person (second party) can cancel the contract based on article 240 of the civil law. According to article 233 of the civil law, the conditions which cancel the contract are as follow:

The conditions contradicting to the requirement of contract
Requirement means the effect and required manes effective.

The requirement of each contract is the direct result of it, the one is embarked on by the contract parties with an aim to reaching it. As an example in case, the requirements of sale contract are that the customer is the owner of the product and the seller is the owner of the price by the entrance of customer contract. In case it is conditional that the sales are not owned by the customer, then such a condition contradicts to the requirement of sale contract. It is also null and negates the sale contract since the contradiction between the cause of condition and the affected party leads to the decline of the two parties.

The vague conditions, the ignorance of which results in ignorance of the parties. The condition is does not suffice solely on the basis of vagueness. Rather, contract is assigned in case one of the parties gets vague due to the vagueness of the condition. As an example in case, when a person buys a house and determine the price by the half of the heritage of his beneficiaries, and the parties making conditional that the process is vague followed by the death of the seller, the ignorance of that dealing price reaches to one of the parties. Based on article 216 civil law which monitors act 3 of article 190, one of the accuracy conditions of the contract is that the deal should not be vague, hence the ambiguity and vagueness of the price results in inaccuracy. In case the condition is vague without affecting the ignorance of the parties, then the contract is right and the condition would be null. As an example in case, one person buys a house in 1 million Rials and receives the money, but the parties make it conditional that the buyer buys 100 kilo of edible products or delivers them to the seller. In this context, due to the fact that there are a variety of edible products and the type of product has not been determined, the condition is vague and null.

Defining the requirements of contract is not an easy job to do and many authors have found it difficult to resolve. It is not feasible to understand what contradicts to the requirements of contract without having knowledge. In this case, the recent discussion loses its influence. Thus, it is critical that steps are followed so as to attain the considered goal.

To consider the issue of identifying the contract requirements, one can take into consideration the definition of marriage contracted done by the researchers who consider the family formation, sexual pleasure, reproduction and cooperation as the goals of the marriage. However, these elements are not regarded as the nature of marriage and they are the claimers of marriage occurring without their development. The clarity and removing the conflict from the considered issues are possible through responding to the question of what are the inherent requirements of the marriage and what the solutions is. Is it a complex which his composed of some factors and each component is one art of it? If it is the situation, then what the relation for each part to the whole is. With respect to the complexity of the issue, a number of theories are offered and the reasonable perspective is admitted by the fans of the men of charity.

Regarding the fact that marriage is the common reality and people base their works on the tradition and evaluate the rightness or falseness of their works based on the traditions, the items have been determined by the lawyer with respect to article 225 of the civil law which states that “tradition involves the morality so that without clarity man the same as the indication in contract”. Some others striving to express the requirement of contract based on the identification of tradition. Although one cannot ignore the importance of tradition in determining the
requirements, the tradition has loosen its importance in which hit was used to be. Since the discussion of traditions diminished the essence of the nature of itself throughout the trips, judges and lawyers’ intervening. Today, the compromise and discussion of the parties are the demonstrators of the realities. It is taken for granted that the contracts which involve the needs and regulations root in the tradition. However, the legal take governing roles and has excluded them from the traditional phenomena since social and economic complexities hider the resolving of problems. One should accept the fact that the nature of each contract depends on the comprise, it can be considered as a realization for tradition which does not suffice for resolving the issues.

Some have focused on the law and consider anything contradicting to the contract which are not consistent with the determined effects since the requirements of contract are those items demonstrated by the lawyer. Some others do not consider the composing condition of contract requirements ad have relied on it within the category of the opposing condition to the book and tradition which should be regarded as the second classification. The reason is that I case the requirements of contract are determined by the legal party, then the determinants can choose the samples. It should be noted that he verdicts and rules of all contracts are not the same and the degree of essentiality differs since most of the regulations have been confirmed o guide which hare complementary and guidance-based. Opposing to these regulations does not lead to dysfunctions. The clergymen and religious scholars have emphasized on this issue and have divided the requirement by the inherent requirements of contract and requirements of contract divorcing. However, such a classification does not free one to have discussion on the issue since one should stick to the way to distinguish between obligatory and interpretive regulations.

The adherence of this perspective seems to be complicated in the era in which article 10 of the civil law has been certified as the principle of liberty and in which the latest scholars void from accepting the initial commitments. Hence, one should admit that although the main basis of all these requirements root in the law and Shari, one should follow the law to make commitment. Otherwise, there will be no room for disusing and no movement will be adhered for developing the regulations since one can rely solely on the law and relinquish from the responsibilities.

The inherent requirements of marriage contract

Human communities have perceived that no other way than marriage contract can lead men and women towards achieving their goals and they are interlocked with the process of marriage contract to initiate their life. The stability in this type of elation is much more than those of liberal sexual relations. Marriage contract is regarded as a mere ethical and religious dependence. Thus, identifying the inherent requirement in this regard necessitates much more intricacy. Following the guidelines of Quran can be considered as solutions in this respect. In interpreting the “Roz Al –Jinan and Roh Al-Jinan”, the primary goal of marriage is establishing a social foundation based on the passionate between men and women. The interpretation of “Majmaolbaian” is the soothing, relaxation, comfort, thinking on creation, implementing social verdicts of Islam. The interpretations of “Kashfolhagaieg” are the reproduction, establishing passionate between men and women, friendship in youth and compassionate in aged period. The interpretations of “Almizan” are the inherit incompleteness of men and women and their need to complement one another as well as establishing a small-sized community. The interpretations of “Nemone” are the ruling of comfort, physical and psychological relaxation. The interpretations of “Altebian Fi Tafsir-el Quran” are the endearment of men and women in order to couple the happiness.

It is clear from the afore-mentioned interpretations that there are different goals in marriage contact among which is the achieving of peace. Such a peace is derived from the compassionate existing between men and women which encompasses a variety of physical, spiritual, economic and social dimensions.

RESULTS

In the holy statements, no special section has addressed the obligatory of child born while reproduction was the religious nature, then the lawyer could specify it directly in the this contract which is in line with Iran’s law. The prophet statement of “get married and reproduce” do not root in obligation since based on the demonstration of all religious persons, marriage is voluntarily emphasized and that reproduction as well as increasing the number of muslims should not be misinterpreted by its religious nature. In Egypt’s law, one can explain based on the nature of conditions for marriage, one can say that in case the man and woman are of different nationality, each parties can follow the regulations of its own country. In Iran’s law, the regulation keeps silence with respect to the case the marriage parties are not of the same nationality. In addition, the differences between Iran and Egypt law regarding the marriage and divorce are derived from the regulations and nationality of couples which are the results of additional objective or nationality difference within the personal and family relations. The compare and contrast of international laws across diverse countries indicate that the opposition of some national laws have different
solutions. In case the nationality differences are highlighted, some country such as Egypt impose the residence law and some others have admitted the imposing of national law. Considered in legal terms, condition is a probable issue and the contract parties should base their acts on it or it is the characteristics which is specified by the pay when assigning the contract.

Articles 265 through 270 of Egypt’s civil law had to do with the discussion of condition. The condition component is a notion dealing with future whose achieving is probable. The condition is divided by abrogative and probated within the article 265 of Egypt’s civil law. This is categorized by null conditions but non-negating, null conditions and negating of contract, accurate conditions in articles 232 through 234 of Iran’s rights.

SUGGESTIONS

To resolve throughout the issue of multiplied national law regarding the notions of marriage and divorce in an accurate way, it is essential to distinguish between the right establishing level (couple relation establishing) and right international effect (marriage results level) since the resolutions of conflicts within the two levels are not the same. The reason is that its problem in some cases that the rule governing the right establishing differs from the rule governing on right international effect and these differences require specify items in each level and lack of attention towards this issue does not resolve the problems and results in much more complexities.

REFERENCES


