STRATEGIES TO DEAL WITH FORCED MARRIAGES WITH EMPHASIZE ON PARENTS’ CIVIL LIABILITY

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ABSTRACT

Forced marriage is an official marriage contract in which the couple’s consent or one of them are ignored. Undoubtedly, several factors affect these norms. But, in any way, its negative effects on family relationship should be studied and considered it as a serious harm. Because, parents with impose on their children marry in addition to the material damage, cause psychological and physical (moral) damages that therefore parents are not immune from these damages.

KEYWORDS: Forced Marriage, Family Breakdown, Social Decay, Physical And Financial Damages, Civil Liability

In human life, numerous factors are threatened human’s life, wealth and sometimes his reputation and thereby harms which are caused by unpredictable and unknown factors are inevitable. Achieving to preventive methods and tools is the aim of human form the past and this risk feeling and thinking about solutions cause discovering appropriate social, economic and legal approaches for prevention of these accidents that we can mention illegitimacy rules entering damage to non-necessary ti damage compensation.

First Section: Quran and Islamic traditions

The Quran

It should be attention that marriage is the milestone of any big human society that has main role in doing personal responsibilities and social relations and it is one of the most important and the most beautiful human traditions in history that is originated from mettle and human’s special creation and it is supplier and moderator of many psychological, emotional, social and even economic harms that has emphasized by Islam and the God ordered in Rome chapter, verse 21 “One of the show thanks God that made you calm yourself standing next to him who created the basis of familiarity and friendship between you and establish peace for the people of knowledge and wisdom , thoughtful and aware of the signs are obvious” and the mystery of human existence is that it is done efficiently.

But, apparently in contemporary Islamic society, we all have lost these meanings and philosophies and understanding, however, solutions of these problems are referring to his divine nature and verses of the Holy Quran and thinking and meditation on the verses and the scenarios and their conditions and that people can see how every man or woman does not have a sense of peace and rest and enjoy the next couple of their health to the beach.

Islamic traditions

Islam has emphasized on parent’s help and other family members to children in mate selection and marriage. Parents’ encourage provide appropriate theme for child marriage is one of his right toward his father (Hor Ameli, volume 200, 15). The fact is that never human is without responsibility and in any condition, any human has some responsibility such as religious, family and social responsibilities. The prophet said “You all within its power of supervision over the affairs of the people you are responsible”.

Among the well-known story of the Prophet Muhammad is quoted saying “The child has three rights on father: first, selection of good name, second, literacy, third, marriage when the child is matured” (Koleini, volume5, 1986, 400).

Someone asked Imam Sadiq: I want to marry a woman, but my parents want I marry other woman. Imam said: marry woman who you wish and leave woman who selected by your parents (without your consent) (Tahzibol Ahkam, volume7, 392).

It is quoted from Prophet “Whenever someone came to woo from parents and his religiosity and morality are approbation and the girl is willing to marry him and he was her proportionate, parents should not oppose otherwise they cause intrigue and corruption (Hor Ameli, volume14, 51).

A friend of Imam Kazem talked him about his girl’s marriage with his brother’s boy. Imam said:
do it, but it should be by girl’s satisfaction, because she has her wishes (Koleini, same, 401).

In this talk, Imam ordered father to take action for his son’s marriage from one hand and on the other hand, he said the girl has her benefit, so her satisfaction is necessary and also it is quoted from Imam Sadig:

“The prophet said marriage virgin girl is not problematic with her permission and without her father’s permission and many other quotations that carry the theme that marriage is a sacred bond that should not be caught in the grip of wrong customs and values. So, humans are free to select their spouse and they have dignity and it must reserve.

As the God said “The honor is for God, prophet and Muslims” and also different statements from prophet such as “loss and no loss” it is found that we should think and meditate (Zeraat, 147, 2009).

So, what is an undisputed fact in the world is decline family foundation. This decline is the consequences of the collapse of moral values and ignorance of true education programs that has faced modern societies with stalemate of the Muslim intellectual. Undoubtedly, Islam is complete and comprehensive way of life and is introduced family as first and foremost focus of education and human development (Mazaheri, 125, 1983) so that it provides the necessary patterns and based on this, parents have more responsibilities.

From Islamic view, family is a real cultural biological and social real unit that its members have moral relationship from small to big and any of them has right for others that is responsible in front of God, so we can claim that all ravages of family in Muslim community in the first aspect is because Islamic instructions have not considered seriously among Muslims, but it should be acknowledged that this divine marriage, social and global phenomenon that all human societies and emphasis on the clash of religions and holy is simple and yet it is a cultural phenomenon that has special color of the any nation.

Second section: The constitution

In this section, in the first sect, we discuss that even constitution emphasize on marriage and it easiness and strength of family foundation and its observed is essential for all people and in the second sect, we discuss that in institution by considering some principles, we derive that against offense, we should want moral rights, because one of the most important harms that forced marriage cause couples is moral harms.

Third section: Common rules

Civil law

In civil law, right consequences of marriage that has not satisfaction is discussed and it is said that accuracy condition of a transect is satisfaction of two faces and marriage is a contract, so it should not have force so long our civil law said about marriage that satisfaction of couples is clause of marriage penetration otherwise marriage is invalid and it is most important that legislator observe this honor that humans are free to select their spouse so that forces marriage is invalid and in this section, we discuss about physical harms of forced marriage and its necessity.

When the court found that the marriage has been reluctant to invalidate the contract and no legal effect unless the person who is reluctantly married then enforce contracts and to approve (Katoozian, 75, 2000).

Here, some points are mentioned

If a girl finds her mate and her father oppose her without having any particular reason and it is obvious for court that his oppose has not navigable reason, the court ordered their marriage (Iragi, 18, 1990).

Register cannot record girl’s marriage that has not father’s permission and father’s permission is essential for virgin girl, father’s permission for a virgin girl is her expedient and if father act girl’s expedient, court allows girl to marry her mate. So, register are not allowed record a girl’s marriage minus her father’s permission unless permission is granted by the court. Therefore, it is proper that laws enacted for this case that girl and boy’s satisfaction is attached documents.

Therefore, the worst kind of marriage is forced marriage and the force is illegal and all contracts such as marriage contract have principles that most important of them is freedom and this principle does not exist in forced marriage and if determination be damaged and if determination be apparent, the legislator does not accept it, because determination should be intrinsic. Thus, the court found that the marriage contract is void and has no legal effect has been reluctant no. Unless the person
is married then disappear grudgingly, reluctantly, to validate and verify (Katoozian, 35, 1995).

Article 1043 of civil law stipulates that “virgin girl’s marriage rely on father or grandfather’s permission”. Article 1043 and the requirement to get permission from the girl's father, has a duty and a breach of its contract. If father take action for marriage, the girl is not contact of contract, so fulfillment of it is not essential for her because she does not address for this contract (Tavasoli, 78, 1994). So the married couple's mutual consent requirement is satisfied if the marriage is not a valid contract. Marriage is a contract. As the parties’, financial problems, dowry obtain the consent of each one, the survival of life and marriage and mutual consent is required under Article 1070 of the Civil Code, if the marriage has taken place, and it is proved reluctant to cancel the contract and marriage is terminated. Article 1070 of civil law stated that spousal consent is the requirement of marriage and when the contract came after the decline, it is piercing unless reluctance be to the degree that contractor lack purpose. Also, in the article 190 of civil law, it is stated that satisfaction of two faces is essential for accuracy of transect and also as it is mentioned marriage is a contract and for its accuracy, two faces should be consent and there is not parents' force. According to article 202 of civil law, reluctance are actions that is effective in a person or sense and threat his life or reputation so that it is not tolerate, so one of the most important marriage condition is mate relationship and its accuracy, in this regard, article 1102 of civil law stated that when marriage is accurate, couple’s relationship between faces and their rights and responsibilities against each other (Ghasemzadeh, 272, 1996).

**Civil liability act**

Civil liability act was adapted at 2010 in 15 articles. First act of this law in the article 329 of civil law and stated that:"each person causes damage intentionally or objectively to someone’s life or health or wealth or commercial reputation that cause material or moral harm, is responsible for damage compensation". Article 2 of this law emphasized on someone’s responsibilities and believes that action causes material or moral damages, when it is confirmed, he is forced to compensate the damages and this case is determined by court.

Article10 of the Civil Liability Act also demand compensation for moral damage caused to the dignity has predicted.

According to articles 1, 2, 8, 9 and 10 of civil law, moral damage is demandable, although it is adapted before revolution, but since it is not against legal rules, its validity continues. According to article 1 of mentioned law"each person causes damage intentionally or objectively to someone’s life or health or wealth or commercial reputation that cause material or moral harm, is responsible for damage compensation". Article 2 of this law emphasized on someone’s responsibilities and believes that action causes material or moral damages, when it is confirmed; he is forced to compensate the damages. According to article 8 of civil law, someone causes damage because of unreal publications or acknowledges, he is responsible to compensate it. Although this article is not mentioned explicitly moral damages. Article 9 of civil law stated that a girl who is forced to illegal bedfellow because of threat or abuse, can in addition to material damage cause moral damage. Finally, article 10 stated that someone cause damage to one’s personal reputation, can demand compensate for material and moral damages. Recalling the discussion on this issue, it seems that it is necessary to determine whether the court's approach to compensation is optional or not? According to Article 3 of the Civil Liability Act Civil Liability Act which states that: "The Court and how the amount and quality of its offset with respect to the circumstances of the case will be" assigned to the compensation of the court. The responsibility to act in accordance with the conditions suffered by way of compensation to choose. (Consistory, Volume 4, 2001, 239).

**RESULT**

Must accept that many of the wrong customs and traditions need modification and change, forcing youth to a marriage outside desire, desire and aspirations has not limited consequences; lack of understanding, lack of motivation in providing cost of living, social frustration and avoid society are all the consequences of forced and unwanted marriage. No doubt such marriages, divorce is always a solution in mind for a couple of turns and forced marriage is the main reason for divorce. The path can be a good marriage happiness for all family members including spouses, children and other relatives.

But in the course of a marriage is always accompanied by tension, conflict and discord between the couple. Then be the first to go this route became uniform and smooth. Forced marriage is a symbol of human rights abuses.
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