

**Evolution of Family Law**  
in  
**Islamic Countries**  
by

**Dr. M. Heydarian**

**Introduction**

It seems prima facie, that Islamic Law or *shari'a* is a unique and coherent legal system, whereas there are notable differences between *Sunni* and *Shi'ah* schools. In *Shi'ah* there are also different sects and branches including *Ithna 'ashari* which is the formal religion of Iran and has followers in some part of other countries like Iraq, Pakistan etc....

In order to keep my account within reasonable limits, I have had to restrict myself to the comparison of Family Laws in force in Iran, Pakistan and the Law of Personal Status recently (in 1959-1963) enacted by Iraq.

Muslim states adopt as far as possible laws which are not repugnant to the Islamic Law.

**History of the Family Law of Iran**

The Status of married women in Iran before 1313 (1934) was low. Their emancipation came about by a series of Statutes, such as the *Civil Code* of 1307; *Marriage Act* of 1310 and 1316 (1931). *Non-Litigious Jurisdiction Act* of 1319 (1940) and, recently, the *Family Protection Act* of 1967.

In more than four decades that have elapsed since the passing of the *Civil Code*, the Iranian women have gone a long way towards achieving their goal of emancipation.

In 1313 and 1314 (1934-1935) the second volume of the *Civil Code*, of Iran comprising the laws pertaining to the personal Status was framed in the light of the Islamic Laws as contained in the books on *shī'ah* Jurisprudence, especially "*sharāy*" and "*sharhe Lum'ah*".

The basic source of the Iranian Family Law is the Islamic "*shī'ah, Ithna 'ashari*" Law.

Recently<sup>(1)</sup>, the *Family Protection Act* was enacted by the parliament in order to bring the *Family Laws* up to date in the light of the new circumstances and needs of the present day society of the country; for the above reason it is under review again.

### **New Legislation**

With new changes in the conditions of family life in Iran, it was necessary to bring some reforms to the Laws governing Family Relations as well as the enfranchisement of women.

Thus in order to make up the deficiency of the provisions of the earlier laws or to effect necessary changes, a new statute, "*Family Protection Act*" was enacted by Parliament.

The regulations for carrying the statute into effect were passed later by the *Cabinet Council*<sup>(2)</sup>.

In fact, the statute is a supplement to the previous Acts relating to the Family Laws<sup>(3)</sup>.

---

1 - In June 1346-1967.

2 - 1968.

3 - such as; Civil Code, Marriage Act, the Non-Litigious Jurisdiction Act and the Law Concerning the production of a Medical Certificate etc....

*Evolution of Family Law In Islamic Countries.*

The statute made some important and basic changes in the Family Law of Iran, especially in the field of polygamy, custody of the children, divorce and maintenance. Eventually it changed the status of husband and wife in Law. The following aspects of the Act should be noted:

**A - Polygamy**

Islamic Countries tried as far as possible to bring Family Laws into conformity with the principles of Islamic Law especially in the light of interpretation of *Qorān* and *Sunna*. For example the source for the prohibition of polygamy is such *Qorānic* Verses as: "..... but if you fear that will not do justice, then "marry" only one.... this is more proper that you may not do injustice"(1).

This passage forbids polygamy unless under the condition that the husband be able to do justice to wives; and again;

"You can not do justice between wives, even though you wish(it)"(2)".

According to this second verse justice between different wives is impossible so second marriage is prohibited. Nevertheless in the interpretation of *Islamic Jurists* "the exercise of justice" means that if a man is wealthy enough to support more than one wife and to treat wives equally, then polygamy can be permitted under certain peculiar circumstances.

Polygamy is not strictly forbidden in Iranian, Pakistani and Iraqi Family Law, but in all three countries restrictions have been placed upon the practice. e.g.; the Family Protection Act of Iran does not absolutely prohibited polygamy, that is, it allows second marriage of the man under

---

1- *Quran, Al-Nessa*: the women Verse 3.

2- *Quran, Al-Nessa*: the women Verse 129.

conditions : under article 14, if a man who is already married, wishes to marry a second wife, he must obtain Permission for the second marriage from court. The court is not bound to give such permission, unless it has obtained possibly after inquiring from the first wife, that the man possesses the financial means and is physically capable of doing justice<sup>(1)</sup> to the both wives equally.

But if a husband marries a second time without obtaining this permission, from the Court, he will be condemned to the punishment prescribed in Article five Marriage Act 1310- 1316<sup>(2)</sup>.

Apparently, according to the above said Article, the consent of the Court is sufficient for a second marriage, not *vice versa*, and the consent of the first wife is not necessary.

On the other hand according to the sub-section 3 of article 11 of the Family protection Act, the first wife who has not given her consent may apply to the court for her divorce (after obtaining a certificate of non-reconciliation) if her husband has married another woman without her consent.

So the Family Protection Act does not declare such marriage as invalid or illegal but only provides punishment for it<sup>(3)</sup>.

Likewise the Iraqi Law of Personal Status provides that: "Marriage with more than one wife is not permitted without the permission of the

---

1- *Family Protection Act* Article 14.

2- In accordance with Article five Marriage Act the Punishment is between six months to two years correctional imprisonment.

3- *Family Protection Act* Article 14.

*Evolution of Family Law In Islamic Countries.*

court, and such permission will be given only on the three conditions:

- a) that the husband is financially able to support more than one wife.
- b) that there is some "lawful benefit" involved; and
- c) that the husband is regarded by the court as capable, of according two or more wives equal treatment.

Anyone who contracts a second marriage in contravention of the Article is liable to imprisonment for not more than one year or a fine not exceeding one hundred "Iraqi Dinars", or both<sup>(1)</sup>.

Similarly the Pakistani Law Provides a punishment for a person who contracts a marriage in contravention of the relevant laws, but it does not render the marriage itself illegal<sup>(2)</sup>.

In Iraqi Law as we discussed the second marriage is not invalid *per se* but it gives rise to penal sanction<sup>(3)</sup>.

In accordance with the Family Law Ordinance of Pakistan a wife may obtain a decree for divorce of her husband contracts a second marriage; but an Iraqi wife cannot obtain a divorce decree even if her husband has not obtained the permission of the court for second marriage.

According to the law of both Countries; the Family Protection Act of Iran<sup>(4)</sup> and the Iraqi Law of personal Status no, appeal shall lie against

---

1- Iraqi Law of Personal Status, Article 4.

2- Muslim Family Laws Ordinance 1961.

3- Iraqi Law of Personal Status. Article 4.

4- Family Protection Act Arti. 16.

the court's decision to allow or forbid a polygamy<sup>(1)</sup>. But the Pakistan Family Law is silent.

Here it should be pointed out that the diversity between the Family Protection Act of Iran and the Iraqi Law of Personal Status and Pakistan Family Laws is as follows:

a)- The Iraqi and Pakistani Law unlike the Family Protection Act do not require a proper investigation to be made from the first wife; on the other hand the Iraqi Law does not state what is meant "by lawful benefit" and what is meant by "justice" and how the judge should determine if injustice between the wives is to be feared.

b)- According to the Iranian and Iraqi Law all family disputes should be referred to the Court of Justice, but in accordance with the Pakistan Muslim Family Laws Ordinance, such disputes should be referred to the chairman of the local Union Council.

### **B- Custody of the Children**

The distinction between the Family Protection Act and the earlier laws of Iran is that: In accordance with the former Laws<sup>(2)</sup> "regarding the custody of the children, a mother enjoys priority up to two years after the birth of the child. After the lapse of this period, the (right of) custody shall go over to the father, except in case of female children who shall remain under the custody of the mother until they attain the age of seven years."<sup>(3)</sup> After that age the children in all case pass into the custody of their father.

---

1- Iraqi Law of Personal Status Article 4.

2- Iranian Civil Code Article 1168 to 1179.

3- *Ibid.* Article 1169.

But according to the Family Protection Act the Court may award the custody to either parent<sup>(1)</sup>.

Moreover the present Act Provides a satisfactory arrangement for the custody of the children before issuing the certificate of Non-reconciliation for divorce.

The Iraqi Law provides that custody shall continue until the children of either sex attains the age of seven years<sup>(2)</sup>. But the judge is empowered to extend the period of custody if it seems that the interests of the child so require.

#### **Maintenance Arrangement**

Article twelve of Family Protection Act reads as follows: "in all cases of dispute when a certificate of non-reconciliation is issued, the court shall decide and order the method of the custody of the children as well as the amount of their maintenance considering the financial conditions of spouses. "The court is obliged at the time of issuing a certificate of non-reconciliation for divorce to make a proper arrangement in the said certificate for the protection of the children of their marriage after the divorce of the parents, if it is settled that the children live with their mother or somebody else; and if it does not consider that the parties have made proper arrangements."

According to the provisions of above article the maintenance of a (divorced) wife and the expenditure for the children in custody shall be payable as follows:

1- The maintenance of wife from the income and assets of the husband.

---

1- Family Protection Act Article 12.

2- The Law of Personal Status.

2- The maintenance of the children (must be paid) from the income and assets of father or mother or of both together even from old age pension.

If the father is not able to maintain the children, it may be paid from the income and assets of the mother alone. Anyway the court will determine a satisfactory way for paying it.

Article 16 of the Act in paragraph 2 and 3 provides that the decision of the court shall be final in cases of the custody of the children and their expenditures.

#### **Revision by the Court**

The court may later revise the former decision, for the custody and maintenance of the children upon information being laid by the parents or any of the near relatives of the children, or by the Public Prosecutor. Whenever the court determines that a review is necessary it shall revise its earlier decision and may transfer the custody of the children to anybody it prefers.<sup>(1)</sup> In any case, the expenditure in respect of the custody shall be borne by the person who has been held responsible for it according to the decision of the court.

The Family Protection Act is very serious on the question of the custody of the children, thus in Article 18 it provides that: before the court starts proceeding the actual case (dispute between husband and wife) it may consider immediately the question of the custody of the children and their protection expenditures and order an interlocutory injunction if the parents

---

1- Family Protection Act Article. 13.

2- *Ibid* Article 16 paragraph 2 & 3.



apply for such an immediate injunction. The provisional injunction about the custody and maintenance of the children as above mentioned<sup>(1)</sup> is final and will be enforced immediately.

The Act further emphasises for the custody of the children, therefore, that law has a retrospective effect or (*ex post facto* effect) and provides that: In the case of children whose parents have been separated from each other before the enactment of the Family Protection Act, if no satisfactory arrangement has been made previously for their custody and maintenance expenses the Regulations of the Act will be effected and applied to them<sup>(2)</sup>. This means that they are subject to the provisions of this Act.

In order to amend the deficiency of the former laws which did not make a proper arrangement for meeting children the Act provides<sup>(3)</sup> that: the court also will lay down an arrangement for divorced spouses to meet their children. The right of parents to visit their children will not be less than once a month and whichever of the parents is granted custody, the other has a right of access to the children.

As we noted the Family Protection Act stresses the custody and maintenance of the children of divorced spouses, but no such provision is found in Pakistani Law; the Pakistani Family Laws is silent and does not mention it expressly but leaves it entirely to Muslim Law in general.

#### **Divorce :**

The most important parts of the Family Protection Act are the provisions relating with divorce. Before the enactment of the Family Protection

---

1- *ibid*, Article 16 paragraph 2 and 3.

2- *ibid*, The last paragraph of Article 12.

3- *ibid*, In second paragraph of Article 12.

Act according to the Iranian Civil Code a husband had the right to repudiate his wife at will<sup>(1)</sup> without the intervention of any court. So the right of divorce was solely granted to the husband and the wife had not a comparable right. Nevertheless married women were permitted to initiate revocation of marriage or divorce (proceedings) on certain specific grounds before the Civil Court:

The grounds on which a wife could obtain a revocation or divorce are as follows:

1- Where the husband's insanity was established, whether permanent or recurrent<sup>(2)</sup>.

2- Where the husband was impotent, subject on condition that it was not cured within one year after the woman's application to a judge (for revocation)<sup>(3)</sup>.

Insanity and impotency in a man create the right for the wife to cancel the marriage contract even if they occur subsequent to the execution of the marriage contract<sup>(4)</sup>.

3- In case a husband refuses to maintain his wife, and it is not possible to enforce the judgement of the court (in this respect) despite the fact that the liability of the husband for maintaining the wife has been established<sup>(5)</sup>, the wife may apply to a court of law for divorce, and the

---

1- Iranian Civil Code Art. 1133. «a man can divorce his wife whenever he wishes to do so».

2- *Ibid.* Art. 1121.

3- *Ibid.* Art. 1122.

4- *Ibid.* Art. 1125.

5- *Ibid.* Art. 1129.

*Evolution of Family Law In Islamic Countries.*

judge will compel her husband to divorce her. So was the case when her husband failed to maintain her.

4- If the husband fails to fulfil any of the other compulsory duties towards his wife, and it is not possible to compel him to fulfil such duties<sup>(1)</sup>.

5- If the husband ill-treated her in such a way as to make the continuation of marital life intolerable to her<sup>(2)</sup>.

6- If her husband suffer from a contagious disease which is hard to cure, and the continuance of the matrimonial relation is therefore dangerous for the wife<sup>(3)</sup>.

7- In addition to the provision of article 11 (4) the Iranian Civil Code also allowed the insertion into marriage contract any stipulation as appended to the contract for marriage or any other binding contract, provided it is not repugnant to the very purpose of marriage, such as:

“The parties to the marriage contract can stipulate any condition to the marriage which is not incompatible with the terms of the Act, either as part of the marriage contract or in another binding contract: for example, it can be stipulated that if the husband marries another wife or absents himself during a certain period, or discontinues the payment of cost of maintenance, or attempts the life of his wife or treats her so harshly that their life together become unbearable, the wife has the power, which she can also transfer to a third party by power of attorney, to obtain a divorce herself after establishing in the court the fact that one of the foregoing alternatives has occurred and after the issue of a final judgement to that effect<sup>(5)</sup>.”

---

1- *Ibid.* Art. 1130 paragraph one.

2- *Ibid.* Art. 1130 paragraph 2.

3- *Ibid.* Art. 1130 paragraph 3.

4- It will be mentioned below.

5- Iranian Civil Code Art. 1190.

**The Valid grounds for divorce in Family Protection Act.**

In spite of the rights of the wife there was a great disparity between the right of wife and that of a husband in Iranian Family Laws. But the Family Protection Act has imposed some restrictions on the absolute right of a husband's freedom, depriving him of his right of unilateral repudiation. Hence, now the husband can only divorce his wife; (after obtaining a certificate of non-reconciliation from the court) and to prove his case he should establish valid grounds for divorce.

According to the Family Protection Act<sup>(1)</sup> the valid grounds on which a certificate of non-reconciliation can be obtained for divorce are as follows: In addition to the cases mentioned in the Civil Code, a husband or wife may also apply to the court for issuing him or her a certificate of non-reconciliation in the following cases:

1- If the husband or wife has, according to the final judgement of a court of law, been sentenced to an imprisonment for a period of five years or more, or the payment of a fine in the cases of failure of which a person is liable to undergo an imprisonment for a period of five years (or more), or to an imprisonment and fine jointly resulting in an imprisonment for a period of five years or more, and the judgement for imprisonment or fine is enforceable.

2- If the husband or wife has been addicted to anything harmful which, in the court's opinion, is detrimental to the very basis of family life and renders the continuation of marital life impossible. Such addiction is mentioned by the Regulations for enforcement of Family Protection Act as:

Addiction to a harmful thing means addiction to any of the narcotic

---

1- Article 11.

*Evolution of Family Law In Islamic Countries.*

drugs, alcoholic drinks, gambling or the like, which, if constantly taken or practised by a person, is apprehended to cause damage or a hygienic, material or moral harm to the addiction person or his or her spouse<sup>(1)</sup>.

3- If the husband marries another woman without the consent of the first wife.

4- If the husband or wife deserts the family. The question whether or not a husband or wife has abandoned the family shall be determined by the court.

5- If a husband or wife has, on account of the commission of a crime repugnant to the position and dignity of the family of the other party, been, according to the final judgement of court of law, found guilty. The question whether or not the crime is repugnant to the position and dignity of the other party shall be determined by the court after taking into consideration the position and circumstances of both parties as well as the custom and other (usual) standards.

The provisions contained in section 11 shall be noted in the Marriage contract Form as "conditions appended to the Contract". And the delegation of an irrevocable power of attorney to the wife for divorcing herself (on behalf of her husband) shall also be explicitly mentioned<sup>(2)</sup>.

It should be pointed out that this restriction does not effect the "Cause of Marriage Disolution" provided in the Civil Code<sup>(3)</sup> and the conditions and prescribed words of divorce "*sighah*"<sup>(4)</sup>.

---

1- Notes 11.

2- Family Protection Act Art. 17.

3- Iranian Civil Code. Article 1121 to 1132 as mentioned above.

4- *ibid*, Article 1134 to 1142.

(In accordance with the Provisions of the Civil Code<sup>(1)</sup>, this divorce shall be irrevocable.)

The Iranian Civil Code recognises a kind of divorce by mutual consent, known as "Mobārāt"<sup>(2)</sup> likewise the Family Protection Act knows a divorce by agreement between the husband and wife, although the mere agreement does not establish a divorce but it is a good ground for issuing a certificate such as:

In the cases where the spouses have mutually been agreed for divorce they are obliged to announce it to the court and the court shall issue a certificate of non-reconciliation as article nine of the Family Protection Act provides<sup>(3)</sup>. And:

On receipt of the aforesaid certificate, the divorce Notary's Office shall take the necessary action for the pronouncement of the divorce and its formal registration<sup>(4)</sup>.

The divorce notary public officers should not take any action for the pronouncement of the (*sighah*) of divorce, or registration of it (as the case may be) unless a certificate of non-reconciliation or a decree of divorce has been obtained from the court by the person demanding the divorce<sup>(5)</sup>.

Even a wife who was granted a power of attorney to repudiate herself;

---

1- *Ibid.* Article 1145.

2- *Ibid.* Art. 1147.

3- Article 9: in the case an agreement has been reached between the husband and wife over divorce, the parties shall give a notice of their agreement to the court, and the court shall issue a certificate of non-reconciliation.

4- Last paragraph of section 8 the Family Protection Act.

5- Family Protection Act Art. 19.

intends to divorce herself on behalf of her husband in accordance with the Article 4 of the Marriage Act must first obtain a certificate of non-reconciliation from the court<sup>(1)</sup>.

### **Appointment of Arbiters**

Moreover, except in the cases relating to the actual subject of marriage and divorce, either party to the dispute may apply to the court for arbiters to be appointed and the court shall appoint up to three arbitrators to judge the dispute between the spouses over separation, (if either of the parties demand): before they are allowed to separate the arbiters shall give a decision on the case within the period appointed by the court<sup>(2)</sup>.

The regulation concerning appointment of arbitrators for settling the disputes between husband and wife has a *Qorānic* source, and the legislature of Iran has been influenced by the *Holy Qorān* which provides that: "If you fear a breach between the two, (husband and wife) appoint an arbiter from his people and an arbiter from her people. If they both desire agreement, *Allāh* will effect harmony between them"<sup>(3)</sup>.

These two arbiters will find out the facts, but their objective must be to effect a reconciliation between the parties. They have no power to decide that marriage shall be dissolved; their function is to attempt to reconcile the parties. If all hopes of reconciliation fail, the final decision for divorce rests with the judge who is legally entitled to give a judgement for divorce.

But under Pakistani Law<sup>(4)</sup> the matters of dispute for reconciliation

---

1- *Ibid.* Art. 10.

2- *Ibid.* Article 6 & 7.

3- *Qorān; Al-Nisa*: the women, Verse 35.

4- *Pakistan Muslim Family Laws Ordinance*, Section 6 & 7.

is referred to an arbitration Council, by the Chairman of the local Union-Council.

*The Comparison of Valid grounds for dissolution of Marriage in Iranian, Iraqi and Pakistani Laws.*

A similar provision is contained in the Pakistan Dissolution of Muslim Marriages Act of 1939, as amended to date: a wife can apply for the dissolution of marriage, in the following cases:

1- When the whereabouts of the husband have not been known for a period of four years<sup>(1)</sup>.

2- "If the husband has neglected or failed to provide for the maintenance of his wife for a period of two years".

The difference between Iranian Civil Code and Pakistan Dissolution of Muslim Marriage Act (P. DMMA.) is that no period is specified in the Iranian Civil Code.

In accordance with Family Protection Act of Iran where either spouse is (according to the final judgement of court) sentenced to an imprisonment for a period of five years or more<sup>(2)</sup>.

3- But this period, according to the Pakistani Law, is seven years: "If the husband has been sentenced to imprisonment for a period of seven years or upwards"<sup>(3)</sup>.

According to the Iranian Civil Code if the husband fails to fulfil any compulsory duties towards his wife, and it is not possible to compel him to fulfil such duties<sup>(4)</sup>.

---

1- *Idid.* Article 7 & 8.

2- Family Protection Act Art 11 p. 1.

3- PMFLO. Article 7.

4- Art. 1130 Paragraph. 1.



*Evolution of Family Law In Islamic Countries.*

4- But according to the Pakistani Law, if the husband has failed to perform, without any reasonable cause, his marital obligations for a period of three years<sup>(1)</sup>.

Here the difference with the Iranian Civil Code is that the latter does not explain the period of failure on the part of husband.

Impotency, subject to the condition that it is not cured even one year after the woman's application to a judge (for revocation)<sup>(2)</sup>.

5- A similar provision is found in Pakistani Law: If the husband was impotent at the time of the marriage and continues to be so.

Insanity of either of the parties when established, whether persistent or intermitent shall give a right to revoke (the marriage contract) to the other party<sup>(3)</sup>.

6- Similarly in the Pakistani Law, if the husband has been insane for a period of two years, or is suffering from leprosy, or a Virulent venereal disease. The difference is that the Iranian Civil Code does not contain a specific period for the continuance of insanity.

Note- Insanity and impotency in a man shall entitle a woman to revoke a marriage contract even if such blemish takes places subsequent to the execution of the marriage contract<sup>(4)</sup>.

7- If the husband has taken a second wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961.

No such condition is found in Iranian Laws.

---

1- PMFLO. Article 8.

2- Iranian Civil Code Art. 1122 Paragraph 1.

3- *ibid* Article 1121.

4- *ibid* Art. 1125.

8- If the husband treats his wife with cruelty, that is to say, (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical illtreatment, or (b) associates with women of evil repute or leads an infamous life, or (c) attempts to force her to lead an immoral life, or (d) disposes of her property or prevents her from exercising her legal rights over it, or (e) obstructs her in observance of her religious profession or practice, or (f) if he having more than one wife, does not treat her equitably in accordance with the injunctions of the *Qur'ân*.

9- On any other ground which is recognized as valid for the dissolution of marriages under the Muslim Law.

10- The other main difference between the Iranian and Pakistani Law is that while, in accordance with Iranian Law<sup>(1)</sup> all matters of family dispute shall be referred to the Family Court of Law, the Pakistan Muslim Family Laws Ordinance of 1961 provides that such disputes including those relating to the second marriage, divorce, custody and maintenance of children shall be referred to the Chairman of the Local Union Council<sup>(2)</sup>.

In the matter of divorce the Iraqi Law of Personal Status provides that a man who wishes to divorce his wife must commence proceedings in the court of *shari'a* to demand a judgement for divorce<sup>(3)</sup>, or if he can not take the matter to the court he must register the repudiation during the *'idda* period; and subsequently the court of Appeal has held that<sup>(4)</sup> even failure to register the repudiation during the *'idda* does not render it invalid *per se*.

As we see, although it is a departure from the traditional Law of Iraq

---

1- Family Protection Act, Article 1.

2- Article 6 to 9.

3- Law of Personal Status, Art. 39.

4- Quoted by Dorin Hinchclief from Miss *N. al-Naqib*; "*Ali V. Farida*, Decision 306, 1963." In *Legal reforms in the Shari' world*.

*Evolution of Family Law In Islamic Countries.*

it is still a very minor restriction, that is, it does not restrict perfectly the right of the husband to divorce because it is not necessary for the court to ask the husband the reason for divorce, as the right of divorce is still an exclusive and unequivocal right of the husband, while in accordance with the Family Protection Act we saw both parties must constitute a valid ground for divorce. On the other hand the Iraqi courts have frequently stated that the right to divorce belongs to the husband.

In spite of this very minor restriction on the right of husband the Iraqi Law of Personal Status has granted the wife the right to apply to the court for divorce on certain specified grounds such as:

1 - "If either spouse alleges that the otherone has injurious behavior in such a way as to make the countinuance of matrimonial life impossible, or to create discord, the other party can claime a judicial dissolution after an investigation has been carried out by two or three arbitrators, who must attempt a reconciliation. If the wife is solely responsible for the discord, the judge is empowered to deprive her of her deferred dowry or even make her pay back not more than half her dower when the whole has been handed over".

2 - Similarly if the husband has been sentenced to imprisonment for five years or more the wife may demand a judicial dissolution<sup>(2)</sup>.

3 - If he has been absent for two or more years without lawful cause<sup>(3)</sup>.

4 - If the husband is suffering from a physical defect which makes matrimonial life dangerous for wife, or if he is unable to consummate the marriage<sup>(4)</sup>.

5 - If the husband's impotence is proved to be permanent. But impotence which supervenes after the marriage has been consummated does not constitute a ground for divorce.

---

1 - Iraqi Law of Personal Status Art. 40.

2 - *Ibid.* Art. 41.

3 - *Ibid.* Art. 43.

4 - *Ibid.* Art. 44.

6- Where the husband fails to maintain his wife either because he refuses to maintain or he is absent, missing or imprisoned for more than one year<sup>(1)</sup>.

7- If the husband failed to observe any lawful stipulation inserted in the contract, the court determines which stipulation is lawful and which is not.

I should like to point out at end of this paper that from this brief comparison of the laws of Iran, Iraq and Pakistan it can be seen that while the Family Law of these countries are substantially Islamic, there are indeed great divergences between them, particularly in divorce., and it may be claimed that Iranian Law especially the Family Protection Act has avoided a complete break with Islamic Law and is more complete than the Iraqi and Pakistani Family Laws and any other in the Islamic world.

*References*

- 1 - N. J. Goulson, "Islamic Family Law: Progress in Pakistan", in J.N.D. Anderson: *Changing Law in Developing Countries*, London 1963.
- 2 - J.N.D. Anderson, "*Changes in the Law of Personal Status in Iraq*".
- 3 - D. Hinchcliffe: "*Legal Reforms in the Shi'i World*" in *Malaya Law Review*. Vol. 10.
- 4 - S.A.R. Naqavi: *Family Laws of Iran*. 1971.
- 5 - Iranian Civil Code. 1313.
- 6 - Family Protection Act. 1346.
- 7 - Rules for carrying into effect the Family Protection Act.
- 8 - Iraqi Law of Personal Status. 1957.
- 9 - Pakistan Family Laws Ordinance 1961.
- 10 - The Holly Qur'ân. trans. by Muhammad Ali 1963.
- 11 - André Colomer: *Droit Musulman Les Personnes-La Famille* 1963.
- 12 - Code du statut Personnel, Tunis.

---

1- *Ibid.* Art. 45.

2- *Ibid.* Art. 4.