



THE FINANCIAL SYSTEM GOVERNING OVER RIGHTS AND OBLIGATIONS OF SPOUSES IN IRANIAN AND BRITISH LAWS

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ABSTRACT

The financial system governing over the spouses may be divided into conventional and legal categories where the conventional system is caused by agreement due to will of spouses as well as the principle of free will; of course, there is not free will in determination of financial relations among the spouses in Iranian and British laws for marriage as it exists in other contracts and this is also because of the certain sensitivity that is enforced by the legislator regarding this subject. The legal system that governs over the relations between spouses may be employed where there is no agreement among the spouses and/ or the existing agreement is assumed void legally. The legal system includes several types either of which possesses certain conditions and effects but what it has been accepted by Islam from the beginning and Iranian law since the date of existence as well as in British law since several decade ago is concerned with financial independence of the married woman (separation of properties), which include many advantages and at the same time it suffers from some disadvantages, which can be resolved by means of legal awards, case law as well as certain powers in the courts concerning to adjustment of financial rights for the spouses. However, properties separation system is the acceptable financial system currently in British and Iranian laws; this does not bar spouses' agreement for joint investment and the granting gift by either of them and other agreement within legal limits.

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Keywords: Financial system, Spouses, Iranian law, British law, Laws for marriage, Spouses rights

Contribution/ Originality

This study is one of very few studies which have investigated financial relations among spouses in Iranian and British law. This comparative study illustrate that there are more legal

limitations to determine financial status of spouses after marriage based on contract in Iranian law compared to British law.

1. INTRODUCTION

The financial system of spouses is a group of rules, which determines the financial and economic relation among wives and husbands and their relationship with third parties in the cases relating to familial affairs. It should be noted that review on financial system may characterize whether marriage contract has affected on ownership for either of spouses in relation to the properties, which they have possessed before marriage or not. Is the ownership of wife's properties transferred to her husband after marriage or vice versa? Or are these properties jointly owned by both of spouses? What is the status of those properties, which either of spouses may possess after marriage and during matrimonial life period in terms of ownership? Who will be responsible for administration of spouses' properties, husband or wife, or both of them?

1.1. Types of Financial System Governing Over Spouses

If we intend to divide financial system for spouses according to a logical classification we should imply that the financial systems for family may be divided into two classes i.e. conventional and legal.

1.1.1. Conventional Financial System

It is a system that the spouses may determine it among them regarding the mutual relations of them during pronouncement of marriage contract. Although in all of studied legal systems the legislator has predicted certain system as a legal system, he has not forbidden the spouses perfectly from agreement against this case. The spouses may determine the governing financial system among themselves as joint ownership of properties system and or system of separation of properties and or combination both. In fact, the regulations regarding legal financial system are complementary rules, which either fill the gap for lack of contract between spouses and/ or about a case on which it was not proper for spouses to agree over it, the order of law is mandatory in this regard. Under the conditions when both parties have determined the conventional financial system provided that some case occurs in this contract about which the status was not identified, this case is referred to the listed regulations in law.

1.1.2. Legal Financial System and Its Types

1.1.2.1. Concept of Legal Financial System

The legal financial system is a type of financial system that the legislator has determined it as the mandatory financial system and in some cases as presupposition in law. Thus, in the cases when the spouses have not consider some regulation regarding their financial relationship during the marriage and/ or if their agreement was void legally in this regard, the given financial system will be enforced over their relations in law.

1.1.3. Types of Legal Financial System

From theoretical viewpoint, legal financial systems are briefly divided into two types: properties joint system, properties separation system.

1.1.4. Properties Joint System

It is a type of financial system based on which all or some part of properties belonged to spouses constitutes a joint group that is divided among the spouses or their heirs upon dissolution of joint ownership.

1.1.5. Total Joint Ownership

According to this definition, the joint ownership may be total. In other words, it includes all properties of spouses- whether the properties possessed by them upon marriage and or what they acquired after marriage- including moveable and immovable properties and their pertained benefits.

1.1.6. Joint Ownership in Income

The joint ownership may be only related to the benefits and interests. According to this system, all properties belonging to either of spouses and also the liabilities for which each of spouses are responsible for, are assumed as their joint properties. For instance, the income that is earned by either of spouses from their job and profession and also the benefits, which are acquired from their exclusive properties and generally any property that they acquire in their joint life regardless of the source of their creation, are deemed as the joint properties for spouses.

This type of joint ownership of properties has been known as legal financial system in French law. Namely, when both parties have not agreed on an illegal condition and terms and during pronouncement of marriage they have not anticipated a system for separation of properties and/ or total properties ownership, the financial joint income system will govern over their relationship.

Regarding the joint incomes, Article 1401 of French Civil Code holds that the joint properties in its positive side includes the incomes, which either of spouses jointly or independently acquires during period of marital period, whether it was acquired from their personal occupation and or the economic activity done on the benefits of their exclusive assets. Article 1409 of the aforesaid law stipulates regarding the included liabilities in properties joint ownership systems that the joint ownership of properties may include in negative side as follows:

The cost that has been exclusively paid by the spouses and also the liabilities due to the contracts concluded by them regarding the home activities and education of children according to Article-220.

Clearly, other liabilities, created during period of joint ownership and in the case of losses.

1.1.7. Joint Ownership in Income and Moveable Properties

Third type of properties joint ownership is joint share in benefits and moveable properties. In this type of joint ownership, rather than joint ownership in their incomes from each other, the

spouses also become partners in the moveable assets, which have belonged to each of them at time of marriage and or they will acquire later for free.

Article 1498 from French Civil Code has held in this regard that when spouses agreed in joint ownership to govern over the income and moveable assets among them. Rather than inclusion of these properties based on legal joint ownership in which these assets are assumed as joint properties, the Joint ownership in positive side comprises of the moveable properties, which have been owned and or possessed by the spouses in date of marriage and or they may acquire them by inheritance or gift, provided that the donor or testator did not determine any illegal term and condition.

At the negative side, a group of jointly owned properties is responsive for a group of liabilities. But, the role of elements versus liabilities is proportional to their share in group of the assets. For example, if the inherited assets belonged to one of spouses comprise of one fourth of a group of jointly owned assets, the share of the inherited properties is one four liabilities against the liabilities belonging to the joint assets (Jean, 1997).

1.1.8. Properties Separation Financial System

In the financial separation system of properties, either of spouses owns the properties, which s/he had before the marriage. Marriage contract will not be effective in ownership of properties by them, moreover, this income that is earned by either of the spouses after marriage during the period of marital life and or the properties acquired whether by inheritance, testimony, gift, and the like and or through economic contracts and activities belong to him/ her and the other spouse has no right toward the given property. Similarly, each of the spouses will be independently responsible for administration of his/ her assets.

2. THE FINANCIAL SYSTEM GOVERNING OVER THE RIGHTS AND OBLIGATIONS OF SPOUSES IN IRANIAN LAW

With respect to the aforesaid issues and by pondering in the rules and regulations regarding the family as well as the general principles of Civil Code, it can be claimed that Iranian law assumes two financial system (conventional and legal) governing over the relations between spouses therefore we primarily discuss about conventional financial system and then legal financial system.

2.1. Conventional Financial System

2.1.1. The Basis for Conventional Financial System

The principle of free will is deemed as the basis for contractual system in Iranian law where it is derived from Article-10 of Civil Code and it evident that the limits of principle of free will should be observed in system of selection of conventional financial system. Namely, the contractual terms should not contradict to good morality and public order and mandatory rules. For instance, if the spouses regulate their financial system in such a way that to waive the right of ownership from either of them, such terms are null and void in legal system of our country since this condition is against the mandatory regulations in Article- 959 from Civil Code holds that no one will be generally entitled to right of enjoying and or right of enforcement of Civil Code from

other person wholly or partially. And at the same time, if during marriage contract or within another contract it is stipulated as condition that the wife should acquire her husband's consent regarding contracts for her assets, whereas this condition does not contradict to the religious regulations so it will be proper and bounding. But if she stipulated as a condition that he has no right to possess her properties this condition will be annulled and not effective because it is against the Islamic scripture and tradition (Shahbagh, 2003).

It has been proved by experience that the contractual freedom is the best way to determine the financial relations. For this reason, the legislator tries to hold the mutual agreement between two parties as the governing rule among two sides and avoid from enactment of mandatory and restrictive rules as possible and enforces the rules constraints exclusively in the cases when public order requires.

Of course, it can be expressed that stipulation of conventional freedom and principle of governance of the will in marriage contract may differ from other contracts to great extent and it could not be compared with other contracts individually and socially; thus, the legislator has assumed certain conditions and effects for it and restricted freedom of individuals' will in this respect. In other words, the principle of free will that plays essential role in the contracts may not be too important in marriage. Of course, both woman and man are legally free to elect the spouse and concluding and/ or not concluding the marriage contract. But given that the law has stipulated certain terms and bars for the marriage and principally determined the effects of marriage per se thus the individuals' will may not alter these effects. For example, spouses may not agree mutually regarding alimony, inheritance, and/ or custody of children together or assign the administration of family to the wife through mutual agreement while most of the regulations regarding the financial contract are of interpretative type (by substitution) and often many marital rules are mandatory and relating to public order and agreement of individuals against them may not be valuable and valid (Safaei and Emami, 2010).

The principle of free will or principle of conventional freedom includes some limits, which should be violated by execution of aforesaid principle. In addition to the regulation listed in the Article-10 of this code, the other restrictive factors from the given principle have been implied in Article- 975 of Civil Code. The content of the aforesaid article is as follows: "The court will not be entitled to enforce the external rules and or the private contracts against the good morality or due to injury the feelings of community or for any other reason that is assumed against public order; even though, execution of given rules is allowed." And additionally, it may be mentioned regarding financial activities that there are some regulations about some issues like marital portion, alimony, and inheritance over which either the individuals have no right to agree against them (e.g. inheritance and alimony) and or there is no perfect freedom as it exists in other contracts (e.g. the marital portion in Articles 1081, 1087, and 1093).

2.1.2. The Example for Conventional Financial System

The foremost example of conventional financial system in Iranian law is the terms during marriage so that during recent years as such terms are mentioned in marriage deed and the spouses shall be pledged to observe these conditions after signing under this deed. The signing of the

conditions during marriage is in fact deemed as resort to properties conventional system. Given that the stipulated conditions during marriage are deemed as subcontracts, which are concluded among both main parties in the main contract, they should possess all the terms for authenticity of contracts. It is obvious that as both contractual parties may rescind the contract, enforcement of the condition by mutual consent and or waiving it will not be barred by the person to whom the given condition is made (Amir Mohammadi, 2009).

Of these stipulated conditions during marriage, one can refer to the condition for conveyance some part of husband's properties to the woman if she divorces (well known as the condition for transferring up to half of husband's asset). The content of the listed condition in marriage deed is as follows: "During marriage contract, the husband was pledged that if the divorce is not concluded by request from the wife and as it discerned by the court, the request for divorce is not due to wife's violation from her duties as wife or because of adverse morality and mistreatment, the husband shall convey a half of his existing properties, which have been acquired during marital period with her and or its equivalent portion in gratis and according the comment by the court."

2.2. Legal Financial System

The Holy Quran has highlighted this issue in Nesa Sura (4:32) and it expresses regarding the independence for either of spouses toward their properties: "...Men shall have the benefit of what they earn and women shall have the benefit of what they earn..."

In the law system of Islamic states, including our country Iran, the assets of husband and wife are not included in the joint properties, but the properties of either of spouses are independent and separated from other's assets and this rule is called 'Financial independence of the married woman' in Iranian law where this is a progressive regulation that the western and European countries have succeeded to achieve it for the women after several years but Iranian law that has excerpted from Islamic Feqh (jurisprudence) and it has stipulated the properties separation system over the financial relations among the spouses.

Article 1118 from Civil Code in Iran, which has been derived from Shiite jurisprudence, holds in this regard: 'The woman may independently possess her properties as she discerns in whatsoever.' This property means the general type of assets i.e. the properties she has acquired before marriage and also what it has been obtained after the marriage. Likewise, these properties include the financial rights, which the husband is responsible for them versus the wife such as alimony, marital portion, and Quantum Meruit as some of the issues are included in the above-said article and the woman may freely possess her properties and execute any physical or legal measure concerning them and the husband has no right to interfere in his wife's assets and properties and his leadership in the family will not also create any power for him in this regard (Safae and Emami, 2010). The wife's economic activity is also assumed as one of her properties and she has not to put it freely at her husband's disposal; unless, she acts in such a way that is deemed normatively and habitually as good treatment or assistance in doing task for the woman where the wife could not asks for wage in this regard (ibid).

From the beginning, Islam has recognized the perfect financial independence for the woman and this is what it has not existed in legal system (law) in most of the countries and many European countries had assumed a type of legal incapacity for the married women.

Martyr Ayatollah Motahari states concerning to financial rights of woman:

Islam has observed unprecedentedly the rights of women in financial and economic issues; alternately, it has granted the perfect economic independence and freedom to them and obstructed the men from interference in her properties and work and on the other hand Islam has exempted women from any compulsion and requirement to earn money by lifting the responsibility from the women to finance the budget for the family (Motahari, 1996).

Based on what it mentioned, in Iranian law the subject of joint ownership of assets, which has been accepted in financial relations among wife and husband in some of the countries, is not implied but some other financial issues can be mentioned including marital portion, Quantum Meruit, and term of conveyance up to a half of assets, inheritance, and alimony each of which needs to separate discussion.

3. TYPES OF FINANCIAL SYSTEM AND THE GOVERNING FINANCIAL SYSTEM OVER THE RIGHTS AND OBLIGATIONS OF SPOUSES IN BRITISH LAW

3.1. Types of Financial Systems in Marriage in British Law

There are some norms governing in the family that originated from religious teachings, morality, and social customs while being affected absolutely by other patterns will be followed certainly the aborted subsequent doubt. Hence, the legislators of Civil Code in France in 1840, who were assumed as the pioneers in ownership modern system regarding marriage, have rejected even from imposing this norm from one point of the country to other place with perfect knowledge. So, it is clear that such rejection may be more logically justified in relation to other countries. For this reason, we can see while both marriage parties can select one method among four types of financial regimes in French law, the other countries have taken measures according to expediencies in their communities despite of this fact that they have often typically affected by modern law in France. For example, only one type of financial regime has been stipulated in legal system (law) at Communist Nations and they have tended as well to stabilize the governmental political and economic policies in family system and in the countries with Common Law, they have been inclined to the assets separation system and it was a tendency that has been caused by accident more than intent and deliberation where the historical trend of financial rights for the spouses has played essential role in their stabilization (Alborzi Voraki, 1992).

Such a system was accepted by member of Common Law family because of this fact that whereas in most of these countries, the married woman is not competent to conclude the contract and agreement about her properties thus gradually several regulations were stipulated regarding their ownership in order to remove such incompetency and to destroy the existing system that has led to control wife's assets by the husband (Cretney, 2004).

Such a trend is explicitly in line with woman's independence for the property and it was manifested within its current form. In other words, stabilization of property separation system was

the required consequence of the efforts, which were made for independence of women in terms of properties.

However, like other member states in the family of Common Law Nations, only property separation regime governs over marriage in British law and spouses has no right to select their regime but some other financial regimes are also proposed, which have some adherents. Moreover, there are some comments especially about the possible agreement out of the framework of discussed regimes as well (ibid, 304).

In this issue about property separation system, we study on property joint ownership system, the deferred community system, and co- ownership system briefly as well.

3.1.1. Separation of Property

This system is the simplest marriage financial system based on which the marriage will not effective on spouses' ownership and with its occurrence the properties of either of spouses will remain under their control and administration as well and each of them are placed under state like the matured single individuals. However, there is no system currently to put the spouses under the condition of the single and separated individuals from each other financially and regarding the issues about ownership and properties in practice and perfectly due to the certain relations among wife and husband, but there are some fields to recognize and distinguish the marriage related financial issue from the normal financial subjects since those persons, who live together without formal marriage and on the familial basis, usually have normative share in sustenance and alimony and they are shared in properties with each other (ibid).

In system of separation of property, the assets, which have been acquired by either of wife or husband independently at time of marriage, whether they are obtained from his/ her effort and or otherwise, will remain as belonging to the given spouse and s/he may independently possess them and conduct any type of contract about them. This also applies concerning to the properties, which are the result of their joint efforts during period of marriage that may be problematic in the case ascertainment of share of either party in acquisition of the given property.

This system may be seemed fair and just that is based on the current law in UK probably due to this fact that even at present the capabilities of women and men are often different in acquisition of properties in most cases, but it has been exposed to several criticisms as well, including this point that it is far from justice and on the one hand with respect to the less monetary and financial abilities which the woman possesses compared to man, she has to play role of wife and mother in the family and other hand she is considered as a party in financial issue in such a way as if she is single. It is because of the fact that the training of children is assumed as the important element in most of marriages and this puts traditional role of female gender of the married woman in an adverse position to the extent that it is related to money earning and financial acquisition (ibid:302). Although, in system of separation of property may grant financial independence to each of spouses and it is preferred to property joint ownership system, one of its defects is in that in the case of dissolution of marriage, it is silent regarding way of division of net profit; unless, both spouses have determined some items of their properties under joint ownership. For this reason, in many countries, there has been a tendency to a new regime that not only to grant the spouses the

independence for conducting the contracts but to predict the new regulations for division of net properties in the case of dissolution of marriage. Sweden is the first countries in Europe in which the system of separation of property has governed in 1920.

But these critiques have been reduced to some extent with some alterations and amendments which have been implemented in this system, particularly by granting wide powers to the courts for adjustment of family properties in the cases of divorce and legal annulments and separation. The procedure, which has been accepted currently by the courts, is that these powers may act as long as to provide division of asset in family among the spouses on most of occasions. Furthermore, Act 1975 (family and the required persons' financing) has determined similar powers to the court that if the marriage stops due to death instead of legal award, these regulation are enforceable (ibid).

3.1.2. Community of Property

The system of community of property of wife and husband is based on this fact that properties spouses are subjected to joint ownership with occurrence of marriage at first place; namely, it includes a joint property that is controlled and administered by the husband and it is divided among them upon dissolution of marriage. Nonetheless, this system comprises of several shapes:

3.1.3. Community of All Properties and Assets before and After Marriage

This system is the most completed and at the same time most abnormal form of joint ownership and thereby all properties, which are owned by spouses at time of marriage and or they acquire them during marriage period by their efforts and via gift, will be transferred into the community of property. Such a system is implemented in its simplest shape based on the concept of marital status thereby the marriage exclusively includes the properties in joint ownership whether it is short term and or in unequal status.

3.1.4. Community in the Acquired Properties after Marriage

According to this system, only those properties which have been purchased and or acquired by the spouses are included in joint properties. Therefore, it is based on theory of partnership (community) that the spouses are shared in what they have acquired during marriage and as result of their joint effort, but the ownership of what they have owned them at the time of marriage will remain under the possession of either of them (ibid, 304).

3.1.5. Deferred Community (The Separation System of the Co-Ownership with Enjoying Equal Financial Rights)

According to this system, the financial rights of both parties will remain unchanged as long as something occurs that requires dissolution of their community. The event that may generally and not necessarily occurs and leads to such dissolution is termination of marriage so if it occurs may lead to division of properties equally between both parties. However, this regime has been called under title of 'Deferred community', it has no effect on ownership and the properties are never maintained jointly; therefore, this system is in fact the same as the separation system of co-ownership with enjoining financial equal rights (ibid, 305, 306).

3.1.6. Co-Ownership

Some alteration and amendments have been exerted in the regime of separation of property in some of marriage financial systems, which essentially based on separation of property about the properties and assets have been acquired by the aid and partnership of wife and husband while they have intended to utilize both of them during their acquisition.

For instance, if during period of marriage the spouse have decided to purchase some properties like house, home appliances, and automobile by their joint assistance and contribution and or to open banking joint accounts and common investments and at the same time they intended to use these properties jointly it is possible to change their joint intention generally in the case of dissolution of marriage so it is so as usual. In some cases, there are some awards from British courts where they are based on the general principle and rule of 'The equality is equity' so the net assets have been equally divided among both parties. Nonetheless, there is no certain limit in this rule at all (Alborzi Voraki, 1992).

More generally, the co-ownership system can be described as equal and simultaneous ownership by spouses in financial benefits in which their legal ownership only belongs to one of them (Walker David, 1980).

3.2. Evaluation of System of Separation of Property and the Current Accepted System in British Law

3.2.1. Assessment of System of Separation of Property

We noticed that the rules of justice less succeeded in reduction of woman's financial incapacity and although it typically provided the rights for wealthy girls and women regarding the investments, it was never tended to protect from women like men. Nevertheless, it was employed at last as a model for ownership of the married women act (1882) that established the principle of separation of property. By virtue of this law, the women, who got married since 1882 could maintain their ownership toward the properties, which they had owned them at time marriage and at the same time they could own the properties acquired personally by them since the above-said time even though their marriage occurred before the given date. This rule also held that the married woman possesses the capacity for acquisition, ownership, and conveyance her exclusive moveable and/ or immoveable properties via will or otherwise just as the period of her celibacy without need to intervening by the trustee party (Cretney, 2004).

Therefore, the legal capacity of the married woman in ownership and conveyance of properties became similar to will of the woman with husband and the single person. The other gradual amendments have led to law regarding rules group amendment (the married woman and the perpetrators of civil liability) 1935 as well over the first half of the 20th century that it held that (ibid, 258) 'The married woman shall possess the capacity for acquisition, ownership, and conveyance of any property and in whatsoever like the period of her celibacy'.

However, occurrence of system separation of property in the countries of Common Law and especially UK has been excessively and further randomly, some experts (ibid, 259) have assumed some factors effective for stabilization of this regulation in British law out of which the easiness and simplicity are some of these factors since the complexities of spouses' rights may be caused by

effectiveness of marriage on system of separation of property while it may be ineffective on right of ownership of spouses due to system of separation of property based on marriage legal status. In other words, according to this system, the marriage is no longer the effective factor to create ownership rights and or it does not alter it and the married woman has the equal rights like the single woman but at the same time, it may effect on exploitation and utilization from the properties as well (Miller, 1999).

This system was based on the prevalent idea and philosophical theory of individualism as well thereby the principle of perfect equality was replaced by gender obedience from the other gender without accepting the power and or any advantage for either party and or admission of legal incapacity for the other party and John Stewarts and his follower principally argued that the equality of ownership rights was a positive move that was necessary for social and moral equality (Cretney, 2004). Additionally, this system was known for middle classes of the people and it was coordinated with the systems of separation of property in English speaking countries as well (ibid, 260).

To the extent that they could not reserve the normative laws and the regulations based on justice in adequate rights for the women over the time, the existing system in twentieth century was also exposed to several deficiencies in confrontation with economic realities in familial life in such a way that some people have considered this system as ambiguous and far from reality because of assuming the equality in rights of the married women and the single women so they have expressed some critiques and defects for this system (Miller, 1999).

Whereas this system has been tended to stabilize the ownership of either of spouses toward what they have own at time of marriage and acquired during period of marriage thus it has overlooked the family as an integrated and composed unit including wife, husband, and children and it has led to ever-increasing problems. The most major disadvantage, which has been mentioned about this system, is in that it ignores the woman's share in the profits resulted from increase in value of properties, particularly in housing residence and it has not anticipated some rights for her in this rule. This system may be adequate for investments, but it is not adequately efficient regarding the properties, which are acquired for family use. The plan for determination of wide powers for the courts has been implemented in order to adjust the property upon dissolution of marriage and in line with compensation for such defects. But these powers were exclusive for cases of marriage dissolution and after this event and it did not include financial disputes during marital period while determination and or adjustment of property in this phase is also often crucially important. For this reason and following to the recommendations by Commission of Law that was included in extension of such powers during marriage period, it seems that the legal awards and cases and procedures have been affected by such a requisite.

3.2.2. The Current Acceptable Financial System in British Law

3.2.2.1. The Current Acceptable Financial System in British Law Regarding the Income and Moveable Assets of Spouses

In British law, this principle is based on separation of property and it is assumed that marriage as a phenomenon has no effect on spouses' ownership toward their properties; albeit, the properties

like home furniture are used jointly; unless, they agreed on an adverse condition (Lowe and Douglas, 2006). The income earned by each of spouses also belong to him/ her whether this income was acquired by his/ her effort and/ or it resulted from his/ her capital; unless, the spouses have invested jointly by their exclusive income or assets so the income resulting from such an investment will be jointly owned and such partnership may occur among individuals out of family as well. The properties, which have been purchased by either of spouses from his/ her personal property, will belong to him/ her unless it is proved by reason and or according to norm that the given person has purchased that property for his/ her own spouse as a result it will belong to his/ her spouse (ibid, 138). For example, if the husband buys a TV this TV will belong to him, but if he purchases some dress or jewels and or other object for her wife so these properties will belong to his wife.

3.2.2.2. The Current Acceptable Financial System in British Law Regarding the Immoveable Properties of Spouses (Right of Ownership and Possession of Housing Residence Possessed By Spouses)

According to principle of separation of property that is the basis for the governing law over the family, the marriage is ineffective in creation and or change of ownership of properties and therefore all the immoveable properties, which had been owned by either of spouses before marriage and/ or they acquire typically during the marriage, will still belong to them and the other spouse has no right of ownership toward the given assets; unless, the given property has been conveyed in favor of him/ her against some value and or in gratuitous transaction and or it has been transferred according to the award issued by the court regularly upon dissolution of marriage. This trend also applies as well to the portion of either of spouses in an immoveable asset that s/he jointly owns it along with his/ her spouse and although some problems may occur, the basic principle is what it already mentioned.

Of course, this fact that a property is entitled to only name of husband and or solely name of wife may not deprive other spouse from proving his/ her rights toward the benefits of the given asset. Similarly, this point that the legal ownership is under the jointly title of spouses may not divest either of them from proving his/ her portion greater than half of the benefits of that property and even from entire asset. Thus, although legal ownership a property is always ascertained through presentation of legal deed and document there are probably some beneficial rights and interests based on justice rules as well.

In British Law, the claim for ownership of benefits in property by a person, whether s/he is one of the spouses and or a alien to whom the legal ownership of that property does not belong, is based on this assumption that accordingly the person, who is entitled for legal ownership of that asset, may keep the given property as a trustee and in trust in order to realize the rights of beneficiary and or beneficiaries toward the benefits of that asset. For example, he husband who owns legally the given property, may keep the property as trust for him and his wife and only for the wife (Cretney, 2004).

As a result, whether the legal owner is either of spouses and or both of them and even third party/ parties, the rights belonging to each of spouses toward the benefits of that property depend

on this type of trust measures, which can explicitly and or implicitly created within their framework.

4. CONCLUSIONS

The financial system for spouses is a group of rules, which determines the economic relations among wife and husband and their relation with third parties under cases regarding the family activities. This system is considered as one of the paramount concerns in law for each of the countries, which have been subjected to many developments with respect to culture, religion, and also politics over the history.

The comparative study in this investigation may show that at first place, both contract and regulation are followed to determine the governing system over the financial relations among spouses in Iranian and British laws and there is no full free will in relationships among spouses in legal system in both of them like other contracts. Secondly, there are more legal limitations to determine financial status of spouses after marriage based on contract in Iranian law compared to British law it is because of sensitivity of Iranian legislator to protection further from the married woman as well as requiring of husband to provide alimony, payment of marital portion, and Quantum Meruit. Therefore, it may be implied that the agreement against the above-said requirements will be renounced noticeably to great extent. The present research states that system of separation of property has been accepted and emphasized since emerging of Islam as well admitted in Iranian law from the beginning and it has always protected from the women but during twentieth century in British law this system was accepted by that legal system while that it had not been already admitted by UK system and they have assumed typically legal incapacity for the women.

The extensive powers for the courts were mentioned in Iranian and British laws in order to adjust properties of the wife in the case of marriage dissolution and in the course of compensation of some defects, which might result due to accurate execution of the system of separation of property. The system of separation of property was also in accordance with the prevalent paradigm and philosophical theory of individualism as well thereby the principle of 'The Equality is the equity' without admission any power and or advantage for either party or without accepting the legal incapacity of the other party was replaced by subservience of a gender to other gender.

According to principle of separation of property, the marriage shall not be effective in creation and/ or change of ownership of spouses' properties but there is some difference among Iranian law and British law in that rather recognition of the above-said rule in Iranian law, there are some other rights for the wife (including marital portion, alimony, Quantum Meruit, and unconditional gift (compulsive granting)), which do not exist in British law the above-said cases (except alimony) have also no historic background at all. Of course, this issue exists in both legal systems based on which either of spouses will inherit from each other in the case of their death.

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