

The Impact of Adultery and illicit relationship on the Financial Rights of the Wife in Iran and England

Authors:

Dr. Salameh Abolhasani^{1*}, Sharareh Mizani²

1. Associate Professor of Criminal Law and Criminology, North Tehran Branch, Islamic Azad University, Tehran, Iran

2. PhD Candidate in Criminal Law and Criminology, North Tehran Branch, Islamic Azad University, Tehran, Iran

Corresponding Author:

Dr. Salameh Abolhasani

Associate Professor of Criminal Law and Criminology, North Tehran Branch, Islamic Azad University, Tehran, Iran

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ABSTRACT:

From a public perspective, breaching marital fidelity through adultery is often seen as grounds for revoking the financial rights derived from marriage. However, this view does not align with the realities of the legal systems governing such matters. In Iran, the financial rights of the wife include dower (mahr), alimony, compensation for household services (ojrat-al-mesle), and, in some cases, asset division. In contrast, in England, dower is not customary, and financial entitlements are determined based on prenuptial agreements, financial needs, the standard of living during marriage, and the parties' contributions to income and childcare. This article examines the legal principles and judicial precedents in Iran and England to analyze the impact of **illicit relationship** on the financial rights of the wife. The findings indicate that in both jurisdictions, this act alone does not affect the wife's financial rights unless specific conditions or agreements dictate otherwise.

Keywords: Adultery, Financial Rights, Divorce, Alimony, Dower, Iranian Law, English Law

INTRODUCTION:

Marital relationships entail legal and moral obligations. In Iran, the financial rights of the wife are established based on civil and Islamic laws, including dower, alimony, compensation for household services, and, in specific cases, asset division. In contrast, English law bases financial rights on contractual agreements and statutes governing asset distribution. This article explores whether a wife's adultery can affect her financial rights under the legal frameworks of Iran and England.

Historical Background of Financial Rights of the Wife in Iranian and Other Legal Systems

Historical studies reveal that financial rights granted to women through marriage are not a modern innovation. For instance, the Code of Hammurabi (circa 1700 BCE) stipulates in Articles 138 and 139 that if a woman is infertile and divorced, her husband must return her dower and trousseau or, in their absence, provide her with a silver mina (500 grams of silver). Conversely, if the woman abandoned her family or engaged in similar acts, her husband was exempt from such payments.

In ancient Iran, marriage obligated the husband to assume responsibilities previously held by the bride's father, along with giving a dowry as a gift. However, if the wife was later found to have a defect, such as

infertility, the husband could reclaim the dowry and divorce her. Similarly, in ancient Greece, fathers would demand a payment from their daughter's husbands in exchange for her marriage and such entitlements were primarily reserved for the wife's family.

In England, prior to the 20th century, the wife's financial rights were largely dependent on her husband's discretion. Under Zoroastrian law, a woman could relinquish her dowry, but if she had already received it and was later found to have a defect, such as infertility, the dowry was reclaimable by the husband. In Judaism, marriage without a dowry is invalid, while Catholic traditions do not mandate dowries. Nevertheless, Protestant practices permit dowries if agreed upon during marriage.

Before Islam, Arab societies practiced forms of marriage in which the dowry belonged to the bride's father, leaving the bride without any financial entitlement. A notable practice, known as "Nikah Shighar," involved exchanging daughters or sisters as dowries, a custom abolished by Islam. The Quran refrains from using the term "dowry," instead referring to it as *sadaq* or *farizeh*, highlighting the wife's right to it. As stated in Quran in verse 4 of surah an-nisa And give women their dowries as a free gift¹." Imam

¹: وَأَوْثَارَ الْبَنَاتِ صَدَقَاتِهِنَّ نَحْلَةً فَإِن طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا:

Sadiq also emphasized that unpaid dowries would remain unpardoned in the Hereafter.

These observations underscore that granting financial rights to women through marriage has been a customary practice across different societies and eras.

****The Impact of Illicit Relationships on the Financial Rights of a Wife:****

According to the laws of Iran, marriage grants the wife certain financial rights, such as **mahr** (dowry), **nafaqah** (maintenance), **ojrat al-mesle** (compensation for services), and, in some cases, a share of the husband's assets acquired after marriage through a stipulation in the marriage contract. **Mahr** is a specified sum of money or property that the husband is obligated to pay to the wife upon marriage, and the wife becomes the owner of this asset immediately upon the conclusion of the marriage contract.

Article 1082 of the Iranian Civil Code states that **mahr** is one of the wife's rights, which she acquires and becomes the owner of upon the conclusion of the marriage contract. Article 1106 of the Iran Civil Code stipulates that in a permanent marriage, the husband is responsible for providing **nafaqah** (maintenance) to the wife. According to Article 1107 of Iran Civil Code, **nafaqah** includes all customary and appropriate needs of the wife, such as housing, clothing, food, household furnishings, medical and healthcare expenses, and even a servant if the wife is accustomed to or requires one due to illness or disability. However, this right is exclusively applicable to permanent marriages, as per Article 1113 of the Iran Civil Code. Additionally, the stipulation for the division of assets is included in Iranian marriage contracts on the eighth page of the marriage certificate, but it is not mandatory. If the husband agrees to this stipulation by signing the marriage contract and later seeks a divorce without the wife's consent, he is obligated to pay half of the assets acquired after the marriage to the wife, unless he can prove that the divorce was due to the wife's misconduct or failure to fulfill her marital duties.

Regarding **mahr**, the laws in England differ significantly from those in Iran. There is no established practice in England for determining or paying a specified sum akin to **mahr** at the time of marriage. As for **nafaqah** (maintenance) in England, unlike in Iran, where the right to maintenance arises solely from marriage, English law recognizes maintenance obligations even in relationships that are not based on a formal marriage contract, provided the relationship has been sufficiently long-lasting. However, these provisions apply only if the parties have not agreed otherwise. Some of the relevant laws governing maintenance in England include the Maintenance Orders Act 1920, the Maintenance Orders Act 1958 and 1972, the Matrimonial Causes Act 1973, the Domestic Proceedings and Magistrates' Courts Act 1978, the Civil Jurisdiction and Judgments

Act 1982, and the Maintenance Enforcement Act 1991.

Given the above, and the wife's entitlement to financial rights after marriage, the question arises as to whether an illicit relationship or immoral behavior on the part of the wife can affect her entitlement to these financial right?

Based on judicial precedents and issued rulings, it can be concluded that an illicit relationship on the part of the wife in Iran does not affect her right to **mahr** or **ujrat al-mesle**. However, with regard to **nafaqah**, it may only be affected if the illicit relationship leads to **nushuz** (disobedience or refusal to fulfill marital duties). Otherwise, the wife is entitled to **nafaqah** if she has been obedient to her husband. It appears that an illicit relationship may only impact the wife's right to a share of the husband's assets. Under Iranian law, an illicit relationship is subject to criminal penalties rather than financial deprivation. The criminal penalties for the wife depend on the nature of the illicit relationship. If the relationship is immoral but does not constitute adultery (**zina**), the wife may be sentenced to up to 99 lashes under Article 637 of the Islamic Penal Code. If adultery is proven, the wife may be subject to the punishment for **zinal-muhsene** (adultery by a married person), although proving such an offense is extremely difficult and often unlikely, as even the non-paternity of a child cannot be considered definitive proof of adultery. Moreover, if there is any doubt regarding the occurrence of adultery, the wife will not be punished.

To further analyze the impact of an illicit relationship on the wife's financial rights in Iran, we can refer to relevant judicial rulings. For example, a ruling by one of the branches of the Supreme Court of Iran, numbered 9209984155 and dated 25/3/1394 (15 June 2015), upheld a decision issued by Branch 13 of the Court of East Azerbaijan, numbered 301360. This ruling confirmed a decision by the First Branch of the General Court of Jolfa, stating that the wife's conviction for an illicit relationship did not nullify her right to **mahr**, but it did affect her entitlement to **nafaqah** due to her disobedience (**nushuz**).

The ruling stated that in the case of Mr. J.K., who sought a divorce due to his wife's immoral conduct, which led to her conviction, the court granted him a certificate of irreconcilability under Article 1133 of the Civil Code and Articles 4, 19, 26, 29, and 34 of the Family Protection Law, allowing him to proceed with the divorce after the ruling became final. Regarding the wife's financial rights, the court ordered the husband to pay five gold coins as an initial installment and one gold coin per month thereafter. The court also ruled that the husband should pay monthly maintenance of one million rials starting from 1/9/92 (22 November 2013) and granted him custody of their child.

This ruling was upheld by Branch 13 of the Court of Appeal, except for the maintenance provision. The appellate court removed the maintenance obligation, as

the wife's illicit relationship was proven, which established her disobedience (*nushuz*). The Supreme Court also confirmed this decision despite the husband's appeal. However, as previously mentioned, the mere existence of an illicit relationship does not automatically prove *nushuz* or nullify the wife's right to *nafaqah* or *ojrat al-misle*. To establish *nushuz*, the wife's refusal to fulfill her marital duties must be proven. In this regard, the Supreme Court's ruling numbered 92099790990233, dated 20/6/1392 (10 September 2013), provides guidance. In this case, the Supreme Court ruled that the wife's moral lapse and conviction for an illicit relationship did not negate her right to *nafaqah* or *ujrat al-mithl*, as she had not been disobedient to her husband. The court emphasized that the wife's misconduct did not justify depriving her of these rights, and the husband was required to fulfill his financial obligations, including *mahr*, under the relevant laws.

In conclusion, while an illicit relationship may have criminal consequences for the wife under Iranian law, it does not generally affect her financial rights, such as *mahr* or *ojrat al-misle*, unless it leads to *nushuz*. In such cases, the wife may lose her entitlement to *nafaqah*, but her other financial rights remain intact.

****The Impact of Adultery on Financial Rights in English Law:****

In English law, the mere proof of an adulterous relationship does not automatically disqualify a wife from her financial rights. Additionally, adultery does not lead to criminal liability. If adultery causes a marital breakdown, the no-fault divorce system introduced under the new law enacted in 2020 and implemented in April 2022 means that no specific reason needs to be provided to request a divorce. Therefore, the cause of the marital breakdown, including adultery, cannot inherently prevent the wife from claiming her financial rights. However, adultery may influence the court's decision depending on other circumstances. In divorce cases, financial matters largely revolve around the needs and circumstances of the parties, and there are no rigid, pre-determined rules in this regard. Judges decide on financial settlements by examining the specifics of each case. It is important to note that in England, there is generally distinction between pre-marital assets and those acquired during the marriage, as pre-marital assets are typically protected for the original owner.

Although there is no legal presumption of a 50/50 division of assets in England, in practice, courts may order such a division depending on the circumstances of the divorce. As previously mentioned, Section 25 of the Matrimonial Causes Act 1973 implicitly indicates that courts consider various factors when dividing assets. These factors include the duration of the marriage, each party's contribution to acquiring assets,

financial needs, and the welfare of any children, which may ultimately lead to an equal division of assets. However, parties can include provisions in their marriage contract or a separate agreement stipulating the division of assets or lifelong maintenance payments. They may also agree that adultery will result in the forfeiture of financial rights or maintenance. In such cases, the court will enforce these agreements.

****Conclusion****

The financial rights of a wife in Iran and England, although based on different legal philosophies, are both systems that prioritize the protection of a wife's financial rights. It appears that the legislators intended for financial rights to be separate from moral considerations, fidelity, and commitment. Adultery does not disqualify a wife from her financial rights because:

Under Article 1082 of the Iranian Civil Code, *mahr* (dowry) becomes the wife's property immediately upon the conclusion of the marriage contract.

- According to Article 1108, a wife is not entitled to *nafaqeh* (maintenance) if she refuses to fulfill her marital duties (*nushuz*). However, adultery only affects *nafaqeh* if it leads to *nushuz*.

ojrat al-mesle (compensation for services) is related to the work a wife performs in the marital home without the intention of gratuitous service. Adultery, even if proven, does not nullify this right.

The stipulation for the division of assets, included in Iranian marriage contracts, is conditional on the wife's good conduct and the absence of misconduct. Adultery may be considered misconduct and could prevent the wife from claiming a share of the husband's assets.

In England, adultery alone is not grounds for denying a wife her financial rights. Even maintenance in England is not exclusively tied to marriage, as a long-term relationship can also entitle a party to maintenance. However, spouses can agree in advance that adultery or infidelity will disqualify a party from financial rights or maintenance. Such agreements are enforceable by the courts.

****Public Perception and the Need for Awareness****

In Iran, public perception often holds that adultery leads to the forfeiture of a wife's financial rights. However, as explained above, this view is inconsistent with legal reality. Therefore, there is a need for greater public awareness on this issue. It is essential for couples to be fully informed about the consequences of breaching the sacred covenant of marriage before entering into it. Incorporating education on this topic into school curricula may be beneficial. Pre-nuptial agreements appear to be an effective measure to prevent situations that parties may find morally or emotionally unacceptable. While pre-nuptial agreements are common in England, they are not yet widely adopted in Iran.

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