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Comprehensive model of the provision of the prohibition of the wife's employment in iranian and egyptian laws based on the Imamiyyah Jurisprudence

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Comprehensive model of the provision of the prohibition of the wife's employment in iranian and egyptian laws based on the Imamiyyah Jurisprudence

Modelo integral de la provisión de la prohibición del empleo de la esposa en las leyes iraníes y egipcias basado en la jurisprudencia Imamiyyah

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ABSTRACT:

In recent years, due to the increasing number of court cases, the question of women's right to employment has become a significant challenge in the legal system. Challenges such as "the superior principle" regarding women's right to employment, employment criteria, and the prohibition of employment are discussed in this article. Various approaches of different authors and the respective judicial processes have been elaborated in a rational framework and, in an attempt to offer a framework for responding to employment disputes concerning the jurisprudential history and the jurists' points of view, each has been thoroughly investigated.

KEYWORDS: Jurisprudential History, Legal System, Superior Principle, Woman's Right to Employment.

RESUMEN:

En los últimos años, debido al creciente número de casos judiciales, la cuestión del derecho de las mujeres al empleo se ha convertido en un desafío importante en el sistema legal. En este artículo se discuten desafíos como "el principio superior" con respecto al derecho de las mujeres al empleo, los criterios de empleo y la prohibición del empleo. Se han elaborado varios enfoques de diferentes autores y los procesos judiciales respectivos en un marco racional y, en un intento de ofrecer un marco para responder a disputas laborales relacionadas con la historia jurisprudencial y los puntos de vista de los juristas, cada uno ha sido investigado a fondo.

PALABRAS CLAVE: Derecho de la Mujer al Empleo, Historia Jurisprudencial, Principio Superior, Sistema Legal.

1. INTRODUCTION

In law and legislation, the notion of the family, as the pivot of any society, is of paramount importance. This importance is, first, due to the unmatched role and significance of the family in creating a healthy society, and secondly, to the confluence of ethics and rights and the inextricable intermingling of these two in this question. This intermingling diminishes the authority of the law to enter the scene and discounts the status of legal rules and regulations. The question of ascendancy (or supremacy) in the family and the employment of one of the spouses, especially the wife, comprises one of the most important issues challenging, and at the forefront of this intermingling. In the 21st century, this issue seems to have transcended even the boundaries of the law, and given its economic, psychological, and sociological significance, it has posed an unbelievably tricky challenge to the science of law. This challenge makes four other fields, i.e., ethics,

economics, psychology, and sociology, indispensable to the science of law and legislation and further renders unviable and futile any theorization attempt without regard to the influence of the four aspects mentioned above. In addition to this theoretical problem, in practice, it has also flooded prosecutors, and the legal system, with complicated and challenging court cases, resulting in the fact that there is no single and consistent procedure in this regard in the Iranian judicial system.

According to Article 1105 of the Iranian Civil Code, family ascendancy is the right of the husband. Furthermore, under Article 1117 of the Civil Code, "a husband may prohibit his wife from an occupation which conflicts with the interests of the family or the husband and/or jeopardizes the wife's dignity." The relationship between these two articles and their convergence and/or divergence with the constitutional principles, including Article 28 and Article 20 of the Constitution as a 'general provision', on the one hand, and international documents, on the other, is one of the difficulties that the Iranian legal system still faces after almost forty years since the Islamic Revolution of 1979. This article aims to address and try to answer these questions. What is "the superior principle" regarding women's right to employment in the legal system of Iran and Egypt? and what approaches do each of these legal systems have in this regard? What are the arguments of the proponents and the opponents of women's right to employment? Is it possible to propose a reliable model based on the Islamic jurisprudence for the prosecutors to reduce the current divide and attain justice? In this article, the author tries to illustrate these responses by presenting his model and appealing to the judicial process. To this end, first, the concept is examined, and the principle is established, and then the resulting divisions are dealt with in order to finally reach a conclusion.

2.METHODS

Women's right to employment in Iran and Egypt:

Concerning the question of women's right to employment, it is important to consider the provisions of Articles 20 and 28 of the Iranian Constitution, as a general and specific regulation. These principles have been taken and interpreted from the Qur'an, specifically verse 32 of Sura Nisa. On the other hand, from the perspective of jurisprudential rules, instances such as 'sanctioning the practice of the Muslim' (Ashtiani: 2004) and 'the rule of self-control' (Nassehi-Behnam: 1985) by the wife can be referred to. From the perspective of international laws, Article 4 of the International Covenant on the Elimination of All Forms of Racial Discrimination, which the Iranian Government acceded to in 1965, explicitly stipulates this right. Therefore, given this requirement in Iran's legal system, a spouse's right to employment, whether it is the husband or the wife, is recognized and sanctioned. The same inference can be made from Article 1117 of the Civil Code. Thus, in the Iranian legal system, a wife's right to employment is protected (Fluehr-Lobban: 1998), and the husband has no presidency over the property of his wife (Moghadam: 2004). However, the wife is allowed to work unless the husband, as the head/ascendant of the family, as provided for in Article 1105 of the Civil Code, deems the work as incompatible with the interests of the family and dignity of the wife or the husband, in which case he may prohibit the wife from employment.

It should, therefore, be noted that in the Iranian legal system, there are general and exclusive restrictions and prohibitions on spouses' right to employment. These prohibitions are divided into two categories: general and exclusive. This article deals exclusively with the prohibitions that stem from matrimony and the provision of the right to employment, or absence thereof.

In the Egyptian legal system, according to its Statistics Institute, the number of women employed rose from 1.39 million in 1986 to 2.61 million in 1996 (Brandt & Kaplan: 1995). Due to this substantial growth, there have been conflicts in recent years between family law and labor law in Egyptian law. According to Egyptian authors, one of the issues always in dispute between the husband's ascendancy and the legal system is the employment of the wife, which stems from a conflict between marriage laws and labor laws. Because

of this conflict, the patriarchal family is gradually distancing from its conventional main functions, such as rearing children and catering to family needs (Ansari-Pour: 2001).

There are generally two approaches to the principle of the wife's right to employment in Egyptian law. According to the first group (of Egyptian law scholars), women increasingly seem to forget and ignore the fact that 'home' is the main stead for women. According to Al-Salqini, women seem to be forgetting that their chief role, for which they have been created, is to settle in the house and perform the required necessitous duties, the most important of which is to serve the needs of their country. For these legal scholars, women's employment should be considered a peripheral, secondary issue in Egyptian society, and the government is required to take necessary measures in order to reduce women's employment. However, Article 35 of the Egyptian Labor Code stipulates that gender, origin, language, religion, and belief cannot be a case for discriminatory treatment when it comes to holding an occupation. Besides, under Articles 9 and 53, the government is required to provide equal opportunities for all Egyptian citizens to work. It also stipulates that all people are equal before the law in terms of their rights and general freedoms. Despite, and probably precisely thanks to, this attitude, there has been a significant, consistent rise in women's employment in Egypt in recent decades and women's presence in all jobs, except service jobs, has increased between years 1970 and 1990 (Bariklou: 2011).

The types and nature of the provision of the right to employment or its prohibition:

Following the explicit wording of Article 18 of the Family Protection Act of 1974, the wife may also prohibit the husband from working in certain circumstances and under certain provisions. However, since the prohibition of the husband by the wife is subject to the clarification of the prohibition provision of the wife by the husband and is considered a 'universal', and is a broad topic which needs investigation in its own right, therefore, it will not be discussed in this article.

1. THE PROVISION OF PROHIBITING THE WIFE'S RIGHT TO EMPLOYMENT PRIOR TO THE MARRIAGE

This provision is not a void provision in the Iranian legal system. However, the question that arises here is: does this provision completely waiver a wife's right to employment? Article 959 of the Civil Code states: "An individual cannot, in any case, deprive himself, in whole or in part, of the right to hold and/or exercise their civil rights." As explicitly stated in this article, the disqualification of rights, in whole or in part, is prohibited. Therefore, some writers have argued that the Civil Code does not permit the complete prohibition of the husband's right to employment by the wife, but gives him the right to have a choice regarding certain professions sanctioned by the wife. (Sherif: 1999, pp.9-13). Therefore, the viewpoint offered by some participants at the Special Meeting of the Research Institute of the Judiciary that the prohibition on a husband's profession set by a wife refers to the type, and not not the principle, of the profession, but in the case of the wife, the husband can prohibit employment in principle, is not correct (Esposito: 2011).

In Egyptian legal system, following the principles of the Sunni Fiqh (jurisprudence), there are some exceptions, one of which is the right to education, when there is a conflict between the obligatory education, sanctioned by the law and the state, by the husband's refusal to give permission to his wife to leave home for this purpose. However, if the education a wife seeks is obligatory, it is equally obligatory on the husband to provide the education to the wife himself, if, of course, he is capable of doing that. Nevertheless, if he is not capable, or refuses to do so, the wife may leave home to seek that education, even without the consent of the husband. If, however, the wife, or the husband, are knowledgeable in Halal (anything permissible by Islamic Sharia) and Haram (anything that is impermissible by Islamic Sharia) and/or the husband can undertake the task of educating the wife himself, then the wife has no right to leave the house without the consent of the husband.

2. Prohibition of a spouse's right to employment by another spouse after marriage

The existence of a great number of legal rules on this question and the different interpretations, whether jurisprudential, legal, and/or based on international documents, have led to great conflicts of opinion among scholars, which has consequently spread to judicial verdicts and rulings. In order to find a plausible solution to this problem, the issue of 'prohibiting a spouse's right to employment' needs to be examined from two perspectives. In the first formulation, the spouse worked, or had the provision for working, prior to the marriage, and in the second, the spouse did not work or did not have the provision for working, prior to the marriage.

2.1 When the spouse worked or had the provision for working, prior to the marriage

In general, there are two approaches to this circumstance, i.e., some scholars allow (sanction) it, and some prohibit it.

2.1.1. Sanction Approach:

Proponents of sanctioning 'the prohibition of the wife's right to employment' believe that if the wife worked prior to marriage, or the following marriage with permission from the husband, then the husband may prohibit her from working. Their arguments are as follows:

A. Article 1117 of the Civil Code

Proponents of this article hold that a husband's authority encompasses both pre- marriage and post-marriage employment (Aghajanian: 1986). Therefore, the same way as a husband can prohibit, without provisions, his wife's right to employment 'after' marriage, he can still prohibit his wife's right to employment 'before' marriage, even if there is a provision, whether implicit or explicit, sanctioning her right to employment. The General Directorate of Law and the Composition of the Laws of the Judiciary has expressed this view in Thesis No. 7/2997 dated 24.10.1982. This view does not have many proponents among writers and scholars and, therefore, faces legal restrictions when it comes to practice. As a matter of course, recourse to predication without an annulment from the attributed party cannot provide the condition of acting upon the recourse, as it encounters many corrupt sequences. The reason is that, firstly, Article 1117 of the Civil Code has not been effective in expressing all limitations on the issue so that it can be applied. Secondly, such a recourse faces the obstacle of 'former commitment' or husband's implicit consent to wife's right to employment, either to work now or about to start working, which will be examined in 'the prohibition approach'.

B. Conflict with the wife leaving home

There is no doubt that a woman loses her freedom after marrying because, since the husband is the head of the family, marital duties preclude her from freely pursuing any legitimate occupation as an unmarried woman (Moghadam: 2003). This view emphasizes first the husband's presidency and ascendancy over the family and the right of the husband to prohibit the wife from working, and secondly, by pointing out the interference of wife's employment with the husband's needs, seeks prohibition license from the husband. In the case of the husband's ascendancy, what seems to be the consensus and emphasizes man's supremacy is with the right and the obligation that, by virtue of being right, certain things, including a wife's right to employment, can be eliminated. Ruling No. 2130/33 dated 27.7.1992 of the Iranian Supreme Court in which in case of the husband's discontent with the employment of the wife, the wife is recognized as the guarantor of the husband's right (Shahidian: 2002) is, thus, unacceptable, for mere discontent of the husband with the employment of the wife, without justified reasons and in the absence of any discrepancy with the husband's right, is no license to prohibit employment. Besides, Article 1117 states the two provisions of family interests and conflict with [the couple's] dignity as instances of interference, occasioned by the wife, with the husband's right to be obeyed. In case of failing to meet the two above provisions and without regard to the third provision, the Supreme Court has ruled for prohibiting the wife's right to employment, which is unacceptable. The prohibition of employment can be legitimate only when the conflict between a wife's

employment with a husband's rights can be proved and, in its essence and of its own accord, it lacks an inherent quality of being automatically provable.

C. The law of imperativeness and relatedness of Article 1117 of the Civil Code and Article 18 of the Family Protection Act with the public order

The proponents of this view hold that if the wife has a job prior to the marriage contract and the husband, knowing in advance, agrees to the continuation of her employment, the husband's right (to prohibit her from employment) remains protected under Article 1117. Their rationale is that this article is an imperative law and therefore the husband can, with the approval from the court, prohibit the wife's employment, even if he had agreed to it in the marriage contract, as such provisions are illegitimate, void, and invalid (Zarchi & Khalil: 2013). Also, precisely on the same basis, they hold that Article 18 of the Family Protection Act is an imperative law, making parties' agreement to its contrary void and ineffective, and the provision thereof also illegitimate and invalid. The Appeals Commission of the Supreme Judicial Council and the Deputy of Legal and Parliamentary Affairs of the Ministry of Justice, in These No. 1744/18 dated 24.12.1996, have both also expressed this same view. Despite the above arguments, however, the reached deduction seems to be unacceptable. First, recourse to the concept of public order in proving an issue poses the problem of ambiguity. For this same reason, some of the most prominent legal scholars and university professors have cited it as an instance of issues that lack legal discipline, the inherent uncertainty, and indeterminacy of which is corruption and would result in corruption. This argument, in its essence and of its own accord, has perfect conceptual congruity, since imperativeness of Article 1117 of the Civil Code and Article 18 of the Family Protection Act in all affairs and issues is denied by the legislative stipulation of Article 1114 of the Civil Code, which states: "A woman must reside in the house designated by her husband unless the woman is given the authority to determine her abode." Certainly, this article is of essential predominance, making it a general law from which particular deductions are to be made, which indicates that in other matters as well, as long as it does not conflict with the duties in relation to the husband, 'compromise to the contrary' can be made. Based on what has been said, economic management, in the form of alimony, comprises the definite limit to these duties. Otherwise, there is a requirement and need for a reason. Secondly, 'custom', as a matter of principle, does not in any way, in case of the existence of the provision of employment, infer the disruption of the public order and, in other words, does not consider the provision of employment to be the cause of the disruption of the public order. Thirdly, given the fact that public order is founded on local values and since today a great number of women prefer to have jobs and manage to include this provision in their marriage contracts, the possibility of this provision being ignored by the husband is by no means valid and, since the conflict between the wife's having a job with her rights was a foreseeable issue for the husband from the outset but he nonetheless consented to such a marriage by default, the husband, therefore, with his consent to such a marriage contract, has voluntarily acted against his own interest and has provided grounds for the abuse of his rights (Moghadam: 2003).

Therefore, acceptance of this view may lead to the denial of the wife's basic rights, including her economic, social, and cultural rights, which are among the second generation human rights. Notwithstanding the validity of this theory, it should not be regarded as an absolute theory and consider any of the wife's rights 'unquestioned', for the husband's presidency over the family and his ascendancy over family affairs, based on provable arguments, is a basic legal right and on this basis, exclusively on the issue of basic human rights, such as the right to education, the right to life, the right to enjoy life amenities, and the right to proper hygiene, this ascendancy can be restricted. Regarding the right to employment, since this right is not recognized as a human right and it is subject to restriction by the family law for the sake of its preservation, in the event of its conflict with the husband's ascendancy, and by an invocation to human rights (unless it was included as a provision or the employment occurred prior to the marriage contract and the husband had consented to it) the wife's right to employment is not definitively sanctioned. Another argument as for why Article 1117 is not an imperative article is that the husband's presidency and ascendancy over all aspects of the family is the

foundation of, and a reference for, the Civil Code, which is in turn founded on Islamic (Shiite) jurisprudence and the jurisprudential history of this issue. This issue will be discussed in the prohibition approach (Zarchi & Khalil: 2013).

In Egyptian law, the prohibition of a wife from employment has been considered based on such premises. On the prohibition of a wife's right to employment, Sunni scholars distinguish between a job that results in the violation of the husband's rights or incurs a damage on him or requires the wife to leave the house and a job that does not lead to the violation of the husband's rights or incur any damage on him. Accordingly, religious leaders have issued Fatwas (edicts) on the prohibition of the first case and have licensed the latter. Ibn-e- Abedin, a Hanafi faqih (religious scholar), is one of the proponents of this approach.

However, it should be taken into consideration that in the Egyptian legal procedure, as opposed to what Sunni faqihs have stipulated, if the wife holds a job, even if the husband does not consent to her employment, the alimony is to be awarded, for the husband has married his wife knowing of her employment status and prohibiting her right to employment is a violation of the wife's rights.

2.1.2. Prohibition Approach

This approach holds that in case of a provision upon marriage contract or the wife's being already employed; the husband may not waive the wife's right to employment. The proponents of this approach are divided into two categories:

A. The binding state of the provision

The provision of employment, essentially, has never been a concern of the earlier faqihs (jurisprudents). Following contemporary political, social, and cultural developments, some faqihs have explicitly considered implicit provisions effective in the present status and have considered explicit consent to employment necessary, stating, for instance: "The husband, unless there is a provision in the marriage contract, may prohibit the wife from holding a job. Therefore, when there is a condition, the husband cannot legally prohibit his wife's right to employment. Consequently, these faqihs consider provision upon marriage a necessary and binding pledge, violation of which grants a wife the right to annul the matrimony. This requirement to comply is not restricted to implicit provisions and includes fundamental provisions. These jurisprudential principles have led some writers to explicitly enumerate various provisions stating that when a woman has a job at the time of marriage and the marriage is sealed on the basis of the continuation of her career status, or a provision is included to its effect upon the marriage, the husband may not prevent her from continuing to work. Some authors have considered the husband's silence, upon marriage, an implicit act equivalent of consent to the wife's holding a job. At the 4th Civil Court Meeting, the participants went even further considering sanctioning wife's employment as a principle except in the case of a dissenting husband:

In the current circumstances, given the inflation and the family's need for the wife to have a decent career, to help meet the cost of living and to augment family foundations and raise children, there is no legal prohibition if the wife is employed in government offices or reputable and reliable companies that typically comply with religious rules and regulations. However, if the husband, at the time of the marriage contract, states his opposition to the employment of the wife, and if the condition is agreed upon by the wife and the marriage is concluded on this basis, the wife loses the right to have an outdoor career.

However, this view is subject to various considerations. Firstly, it ignores the explicit wording of Article 1117 of the Civil Code, which recognizes the legitimacy of the prohibition of the wife to employment by the husband. This prohibition loses applicability only if it is conditional to a reference to the provision. Secondly, Article 167 of the Constitution and the jurisprudential history reject such an understanding, and thirdly, inflation and other economic conditions are not regarded as effective constraints on the law of the legislator or legislature, and can, ultimately, be agreed upon by the couple on the condition of the wife's benefit. Fourth, the wife's employment, ironically and in contrast to what has been brought up as a case against, has in many cases been incompatible with the upbringing of children. Regarding the Egyptian legal process, it is essential to first consider the provisions of a marriage contract in Sunni jurisprudence. These provisions are divided

into three parts. 1. Conditions that are contrary to the contractual requirements. 2. Corrupt provisions, which are merely corrupt provisions. 3. Correct provisions.

In the case of the correct provisions and the obligation of meeting the promise, with its proponents such as Abu Hanifa, Malik, Shafi'i, Laith, and Thouri, although they have ruled that these provisions are correct, they do not consider them obligatory. Others have considered it obligatory, which has been quoted from Amr ibn Abd al-Aziz, Al-Awsai, and Ahmad ibn Hanbal.

Despite all the controversy and differences of opinion, the Egyptian legal doctrine has set forth explicit conclusions for cases in which the husband at first consents to his wife's employment and/but then prohibits her right to employment. In the Egyptian legal procedure, if the husband at first gives permission to the wife to work, he cannot prohibit the continuation of this right in the future. In other words, he is denied the right to revoke this permission. Therefore, in this hypothesis, if the husband demands the wife to stop working and the wife decides to continue to work, the wife will not be considered as non-compliant and/or disobedient, and her alimony will not be abolished (Shahidian: 2002).

However, Egyptian law recognizes the refusal of the wife illegitimate in two cases: First, if it recognizes it is an abuse of the right by the wife. Second, if the law recognizes this employment incompatible and in conflict with family interests.

These terms and conditions are documented in Clause 5, Article 1 of law number 100 of the 1985 Act, which in the case of the existence of an explicit or implicit provision, grants the wife her right to employment. This clause stipulates that the wife's alimony is not abolished on the assumption of her leaving home for legitimate work with the husband's explicit or implicit consent. As a matter of fact, in case of expression of consent by the husband, (either implied or clearly stated) the alimony cannot be abolished.

B. The priority of "leasing" over the marriage

According to this theory, if a woman who, technically speaking, is "leased" (i.e., hired) for a term of service and marries before the termination of the work contract, that lease contract, even if it is in conflict with the husband's legitimate expectations, remains valid and binding. On the other hand, a job contract, according to the interpretation offered by the existing legal and jurisprudential system, is a lease contract, and, following the views of jurists and the Civil Code, a propitious covenant. Since employment contracts all involve leasing (hiring) individuals, therefore, there is no difference in the nature of contracts. On the other hand, the marriage contract, due to its involvement of two parties, is subject to contract contingency and conditions. This contingency is binding and setting provisions to its contrary is illegitimate and invalid (Brandt & Kaplan: 1995). A wife, in its essence and of its own accord, when employed prior to the marriage contract, is considered a hired entity and transfers her interests to the owner. If, in this situation, marriage is contracted, given the contingency of the lease contract and the necessity of abiding by this binding covenant, a marriage contract does not have the power to annul a lease contract. This view is not specific to the lease contract and, in any case, where an obligation is placed on the wife, it remains in force in case of her marriage. Sayyed Yazdi, by appealing to this issue, refers to the question of oath or pledge.

The question that remains to be determined is whether or not, in its essence and of its own accord, the husband's right to be obeyed and to be catered to has an inherent special quality to it, or it is a general rule applicable to the husband in relation to the wife as well. Given that these rules are not based on, and specific to, a wife's being hired and the gender factor is not the factor that, in the cases mentioned earlier, causes a change in leasing rules, but other factors such as the legal necessity of the marriage contract (according to which certain rights are accorded to the husband) and the factor of time, i.e. the precedence and/or the antecedence of the lease contract and the marriage contract to each other, therefore, the late Seyyed Mohammad Kazem Yazdi, distinguishes between hiring a married and/or an unmarried woman. He considers hiring an unmarried woman to be permissible and in the case of a married woman, distinguishes between the cases whether the woman is hired before or after marriage. In the case of the former, where the

woman is hired before the marriage contract, he grants absolute priority to the lease contract, even if part of it may fall within the time span after the marriage contract and may conflict with the husband's rights.

However, in the latter case, where the woman is hired after the marriage contract, the principle of hire is without a flaw, which will not be elaborated in this article for the reason of space. It is noteworthy here to mention the verdicts 19.11.1995 – 1339 to 1342 of Branch 4 of the General Court of Tehran in a case where the defendant, the wife, according to the official marriage contract, was employed with BankMelli (The National Bank) and the complainant (the husband) sought to waive her right to employment despite the fact that he had entered the marriage contract knowing that she was already employed. Employment in such workplaces is subject to specific criteria and results in the acquisition of remunerative rights during employment that cannot be waived except by law. In this case, in terms of technical relationships, in its essence and of its own accord, and the issue, the previous essential (work) contract is prior to the marriage contract, and is not canceled by the marriage contract.

2.2. *When the spouse did not work or did not have the provision to work, prior to the marriage.*

The most important reference used for this prohibition is Article 1117 of the Civil Code and Article 18 of the Family Protection Act. These articles do not include provisions upon marriage and the priority of necessity contracts such as leasing over marriage contracts. Thus, with the exception of these two cases, the man has the right to prohibit the wife from employment in case it conflicts with family interests and with [the couple's and the family's] dignity (Moghadam: 2004).

When considering the Egyptian legal system, first, it should be noted that family laws are very diverse and divided, leading to instances where six laws can be invoked in a single case. Some law scholars have explicitly stated this as one of the biggest problems of the Egyptian legal system. Accordingly, numerous lawyers and legal scholars have repeatedly underlined the necessity of integrating such diverse laws. Second, Egyptian law has stated some of the terms and rules concerning women's employment in the Egyptian labor law. Thirdly, the family law system in Egypt is one of personal status, governed by fiqh (Islamic jurisprudence).

3. RESULTS

In view of the above three points, it should also be noted that, in accordance with Article 9 and Article 53, the government is obliged to provide equal opportunities for employment to all Egyptian citizens. It also stipulates that all individuals are equal before the law in terms of their rights and general freedoms (Ansari-Pour: 2001). In Egyptian Labor Law, in the second chapter of the first book approved in 2003, the most important laws regarding women's employment are as follows:

A. Equality between men and women in the Labor Code. Article 88 provides that as long as there is equality of employment between women and men, all laws concerning the employment of men shall also apply to women without discrimination.

B. Jobs from which women are prohibited. Under Article 90 of the Labor Code, it is forbidden for women to engage in work that is harmful to their physical and/or moral health. It also includes jobs that are completely forbidden for women. Under this law, the Minister of Human Resources issued Directive No. 155 in 2003, in which jobs from which women are barred are stipulated. This directive includes 30 professions that are recognized as excessively hard or harmful to women's physical or moral health.

C. Prohibition of the employment of women at nighttime unless in emergencies. Article 89 prohibits the employment of women from 7 pm to 7 am. The terms of this article were issued by the related minister in Directive 183.

D. Announcing the orders related to women's employment

Article 95 of the new law requires employers, in case there are 5 or more female employees, to install a copy of women's employment order in the workplace or at employees' common gathering area. However, the 1981 law required the installation of such a copy even if there was only one female employee.

The jurisprudential consensus refers to this law and the directives issued on instances of the prohibition of women's employment to Sunni jurisprudence.

Al-Tawijari mentions two essential duties for women in Sunni jurisprudence, which restrict women's employment: The first one is the duty of taking care of the husband's needs and doing justice to his and the family's rights, and the second is her duty of motherhood, to raise and care for the children. However, despite the two main duties of women, in the dilemma of working in or out of the home, Sunni jurists give priority to the former (Bariklou: 2011).

In contemporary Arab law, women's employment, workplace-wise, is divided into two categories of working at home (indoors) and working outside the home (outdoors). Working at home refers to activities such as cooking, sewing, or writing books and articles that a woman does at home and then trades it for profit. Outdoor work refers to jobs in hospitals, schools, hotels, etc. In cases in which a woman's employment requires leaving the house, Sunni jurists have offered two views: Hanafiyah, Malikiyah, Shafiyah, and Han'abalah, all consider a woman's leaving the house permissible, but other remaining sects do not share this stance. There are also two stances regarding the case where the woman does not need to leave the house. Ibn Abedin, a Hanafi scholar, and jurist considers such work superior to the work that requires leaving the house and Hanafiyah, Malikiyah, Shafiyah, and Han'abalah all consider it permissible.

Those who consider it permissible, however, do not grant it absolute permission. Rather, they set criteria and restrictions for employment under such circumstances: First, if the woman is not married, her father or her guardian must consent to it. In case she is married, the husband must give his consent (Sherif: 1999).

Second, her employment shall be free from mingling with other men.

Third, her body shall be covered, in accordance with Islamic rules and principles, in her encounters with other men. She shall also avoid wearing colored clothes, ornaments, or perfumes because a workplace is different from a party.

Fourth, she must be committed to Islamic ethics. Fifth, her work must be commensurate with the nature of women and their power. Examples are careers in education, nursing, tailoring, etc.

With regard to the provisions upon the marriage contract and their legitimacy, the Egyptian authors, with reference to the fundamental Quranic rule of "A Muslim must fulfill his promise", believe that:

Such a provision is binding, and under this provision, the husband may not invoke the wife's permission to leave the house unless the wife's leaving the house for work entails damage to family interests or her physical health (Aghajanian: 1986). It goes without saying that such a response would not be acceptable since it is certain that employees in many occupations would result in the gradual diminishment of physical health or even disease. Even in occupations such as hairdressing and tailoring, after a while, one has physical health different from it was before employment. It is, therefore, essential to limit the factor of "the loss of physical strength or illness" to cases/jobs which are almost universally regarded as instances of high risk and disease-causing occupations.

4. CONCLUSION

In contemporary times and considering the non-traditional modern and the probably postmodern world we are living in, employment has become increasingly important in social relations. In the Iranian legal system, the superior principle regarding women's employment is the permissibility of employment. Therefore, the law does not prohibit the employment of women except in specific cases. One of these cases is Article 1117 of the Civil Code, in which women's employment is sanctioned by the law, except in cases that family interests and dignity are at stake. The proponents of the husband's right to prohibit the wife from working implicitly refer to the three rationales enunciated in Article 1117, the conflict with the wife's leaving the house with her household and maternal duties, the imperativeness of the law of the husband's ascendancy and presidency over the family, and the potential threat to public order (Fluehr-Lobban: 1998). According to Article 167

of the Iranian Constitution and the Civil Code, which is based on Imamiyyah fiqh or jurisprudence, one of the cases that can annul a husband's right to prohibition is the provision reached mutually at the time of the marriage contract. This provision is an implicit but fundamental condition.

Therefore, once provision upon marriage contract is proved, the restriction of Article 1117 is broken, and the two parties can either before or during the marriage, make the employment condition documented and official, either in the marriage contract or in a separate document. Another area frequently disputed by legal scholars is the question of the wife's employment prior to marriage. According to some jurisprudents, even if the husband had been aware of this issue, the right to deter his wife from continuing to work is reserved for the husband. However, given jurisprudents' famous doctrine of the precedence and necessity of the leasing contract over the marriage contract, such prohibition is not justified, and the husband cannot prohibit the wife from her right to employment. Therefore, in the Iranian legal system, if the husband had been aware of his wife's employment at the time of the marriage contract, whether this employment is in public or private sector, he cannot prohibit the wife from being employed, and this right remains in place until the end of the contract (Nassehi-Behnam: 1985).

In the Egyptian legal system, family laws are very diverse and divided, inasmuch six laws can be invoked in a single case. Some legal scholars have explicitly cited this as one of the problems of the Egyptian legal system. However, in accordance with the superior principle of Article 9 and Article 53, the Egyptian government is obliged to provide equal employment opportunities for all Egyptian citizens. The Egyptian legal system has recognized the husband's refusal to permit his wife's employment in two cases: first when it is determined that this employment is an abuse of the right; second, when it is recognized as incompatible and in conflict, with family interests. The reference to these terms, which in case of the existence of an explicit or implicit provision, grants the wife her right to employment, is Clause 5 of Article 1 of Act number 100 of 1985. This clause states that the wife's alimony is not canceled on the assumption of her leaving home for legitimate work with the husband's, either explicit or implicit, consent. As a matter of principle, whether the husband's consent is expressed or implied, the alimony cannot be revoked. Also in the Egyptian legal process, contrary to what the Sunni jurisprudents have prescribed, if the wife has a career, even if the husband does not consent to her employment, the alimony is awarded, for the husband has married her knowing beforehand about her career status, and this indicates the waiver of the husband's right.

BIODATA

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