

The Family Protection Act (1975)

Section 1. All civil disputes arising from matrimonial relations or family litigations shall be entertained by the Divisional (*Sharistān*) Courts, or, where the Divisional (*Sharistān*) Courts do not exist, by the District (*Bakhsh*) Courts without observing the legal formalities provided in the Civil Procedure Code.

Section 2. By family litigations is meant the civil litigations taking place between a husband and wife, (or their) children, paternal grandfather, executor or guardian, in respect of the rights and obligations provided in Book Seventh (on Marriage and Divorce), Book Eighth (on Children), Book Ninth (on Family), and Book Tenth (on Legal Disability and Guardianship) of the Civil Code, as well as Sections 1005, 1006, 1028, 1029 and 1030 of the aforesaid Law and the relevant sections of the Non-Litigious Jurisdiction Act.

Section 3. The court shall carry out an investigation or take any steps it deems necessary for the throwing light on the subject of litigation and for administering justice, as making an inquiry through witnesses or persons having knowledge of the facts or inviting the help of social workers and the like, as and how it is required.

Section 4. The court may exempt either of the parties (to a litigation) from the payment of the court fees as well as the fees of the experts and arbitrators and other (relevant) fees after declaring the party as destitute, and (while doing so) the court shall also appoint an advocate for providing legal aid to the said party.

In case the party declared as destitute by the court is the winning party (in the litigation), the losing party shall be liable to the payment of the aforesaid fees as well as (the fees of) the aforesaid advocate.

Section 5. The advocates and experts mentioned in the above section shall be bound to obey the orders of the court.

Section 6. Except in the cases relating to the actual subject of marriage and divorce, the court shall refer all plaints by either of the parties in case of (civil) litigation for arbitration by one or three persons, who shall give a decision on the case within the period appointed by the court.

In case the court finds that the said plain is intended to evade the consideration of the case or to prolong its proceedings, it shall refuse to entertain the plaint.

The arbitration under this Act shall not be governed by the conditions of arbitration provided in the Civil Procedure Code.

Section 7. The arbitrator, or arbitrators, shall endeavour to bring about a reconciliation between the parties, and in case of failure shall give a verdict on the subject-matter of the litigation within the period prescribed by the court and submit it to the court.

The verdict of the arbitrator (or arbitrators) shall be communicated by the court to both parties, and the parties may intimate the court about their objection (if any) on the verdict within a period of ten days from the date of receipt thereof.

In case the parties agree to the verdict of the arbitrator (or arbitrators) or fail to intimate the court about their objection on the verdict within the prescribed period, the court shall order the enforcement of the verdict. In case (either of) the parties have an objection on the verdict, the court shall hold a special session and consider the objection and shall give its own decision in the case. This decision of the court shall be final.

In case the court has not received the verdict of the (arbitrator or) arbitrators within the prescribed period, it shall directly take up the consideration of the case and give its consideration thereon.

Section 8. The prescribed words (Sighah) of divorce shall be pronounced after the court has considered the relevant case and issued a certificate of non-reconciliation between the parties.

A person desirous of obtaining the aforesaid certificate of non-reconciliation between the parties shall apply to the court for issuing him or her such certificate.

The applicant should also mention the exact reasons for obtaining the aforesaid certificate.

On receipt of the application, the court shall directly, or, if it deems necessary, through an arbitrator or arbitrators, endeavour to bring about a compromise between the husband and wife, and prevent the occurrence of a divorce.

In case all the efforts of the court to bring about a reconciliation fail to bear the desired result, the court shall issue a certificate of non-reconciliation between the parties.

On receipt of the aforesaid certificate, the Divorce (Registration) Office shall take necessary action for the pronouncement of the divorce and its registration.

Section 9. In case an agreement has been reached between the husband and wife over the divorce, the parties shall give a notice of their agreement to the court, and the court shall issue (them) a certificate of non-reconciliation.

In case the spouses in their notice to the court (about their agreement over divorce) fail to propose a satisfactory agreement for the custody of the children and the payment of the expenditure in respect thereof, the court shall act in accordance with section 13 of this Act.

In case the arrangement for the custody of the children made by the spouses fails to work after the enforcement of the divorce, the court shall act in accordance with section 13 of

this Act on receipt of a notice by either of the parents or any near relative of the child, or the Divisional (Sharistān) Public Prosecutor.

Section 10. If a wife intends to divorce herself on behalf of her husband and also in case of section 4 of the Marriage Act, she shall (first) obtain from the court a certificate of non-reconciliation provided in section 8 above.

Section 11. In addition to the cases mentioned in the Civil Code, a husband or wife may also apply to the court for issuing him or her a certificate of non-reconciliation in the following cases”

1. If the husband or wife has, according to the final judgment of a court of law, been sentenced to an imprisonment for a period of five years or more, or the payment of a fine in case of failure of which a person is liable to undergo an imprisonment for a period of five years (or more), or to an imprisonment and fine jointly resulting in an imprisonment for a period of five years or more, and (further, in case) the judgment for imprisonment or fine is enforceable.
2. If the husband or wife has been addicted to anything harmful which, according to the judgment of the court, is detrimental to the very basis of the family life and renders the continuation of the marital life impossible.
3. If the husband marries another woman without the consent of the first wife.
4. If the husband or wife abandons the family life. The question whether or not a husband or wife has abandoned the family life shall be determined by the court.
5. If a husband or wife has, on account of the commission of a crime repugnant to the position and dignity of the family of the other party, been, according to the final judgment of a court of law, found guilty. The question whether or not the crime is repugnant to the position and dignity of the other party shall be determined by the court after taking into consideration the position and circumstances of both the parties as well as the custom and other (usual) standards.

Section 12. In cases of disputes when a certificate of non-reconciliation is issued, the court shall determine and order the method of custody of the children and the amount of maintenance (payable to the wife by the husband after separation) during the 'Iddah after taking into consideration the moral and financial position of the husband and wife as well as the interest of the children. The court shall mention in the certificate of non-reconciliation the arrangement made for the custody of the children after the divorce. In case the children are required to be kept in the custody of the mother or any other person, the arrangement for the custody as well as the total expenditure in respect thereof shall also be determined (by the court).

The expenditure on maintenance of the wife (during 'Iddah) shall be payable from the income and assets of the husband; while that of the children shall be payable from the income and assets of the husband or wife or both, or even from their pension. The court shall determine the amount which should be defrayed for each child from the income or assets of the husband or wife, or both, and shall order a satisfactory arrangement for payment thereof.

Likewise, the court shall also determine the arrangement for the parties to meet the children. In case of absence or demise of the father or mother, the right of meeting the child (or children) shall be transferred to the near relatives of the first degree of the absent or deceased person.

The provisions of this Act shall also apply to the children whose parents have been separated from each other before the enactment of this Act, provided no satisfactory arrangement had been made for their custody and protection.

Section 13. In every case when the court, in accordance with the notice by either of the parents or any near relatives of the children or the Divisional (Sharistān) Public Prosecutor, decides that it is expedient to revise the arrangement for the custody of the children, it shall revise its earlier decision. In such cases the court may transfer the custody of the child (or children) to any person it deems suitable. In any case, the expenditure in respect of the custody shall be borne by the person who has been held responsible for it according to the decision of the court.

Section 14. When a man, already having a wife, desires to marry another women, he shall obtain permission from the court of law. The court shall give the permission only when it has taken the necessary steps, and, if possible, has made an inquiry from the present wife of the man, in order to assure the financial potentiality and (physical) ability of the man for doing justice (to both the wives).

In case the man marries (another woman) without obtaining the due permission from the court, he shall be liable for the punishment provided in section 5 of the Marriage Act of 1310-1316[iii] (A.H. – 1931-1937 A.D.).

Section 15. A husband may, with the approval of the court, prevent his wife from an occupation which is repugnant to the interests of his or her family or position.

Section 16. The decision of the court shall be final in the following cases:

1. Issue of a non-reconciliation certificate;
2. Determination of the (amount of) maintenance for the 'Iddah period (payable by the husband to the wife), and the expenditure in respect of the custody of the children;
3. Custody of the children;
4. Right of the father or mother or the near relatives of first degree of the absent or deceased father or mother or children for meeting the children; and
5. Permission provided in section 14 above.

Section 17. The provisions contained in section 11 shall be noted in the Marriage Contract Form as "Conditions appended to the Contract". Here (among others), the fact relating to the delegation of an irrevocable power of attorney to the wife for divorcing herself (on behalf of the husband) shall also be explicitly mentioned.

In accordance with the provisions of the Civil Code,[iv] this divorce shall be irrevocable.

Section 18. A husband or wife, or both, may make an application to the court for the immediate consideration of the question of custody of their children, the existing position (of the children), or the expenditure in respect of their custody, and for issuing an order in this connection before entering into the consideration of their actual dispute.

On receipt of the application, the court shall take up its consideration (immediately). The temporary order issued by the court concerning the custody or expenditure (on the custody) of the children shall be final, and shall be enforceable with immediate effect.

Section 19. After the enactment of this Act, the Superintendents of the Divorce (Registration) Offices shall, unless a certificate of non-reconciliation or an order of the court is produced, not take any action for the pronouncement of the Sîghah (or prescribed words) of divorce, or the registration of the divorce (as the case may be).

Whosoever contravenes the provisions of this section shall be liable to a disciplinary punishment of the fourth degree, or above.

Note.- A non-reconciliation certificate is valid for three months from the date of its issue.

Section 20. While considering matters relating to family (disputes), the proceedings of the court shall be held in camerâ.

Section 21. The enforcement of the judgments of the court shall be governed by the General Provisions (of the Civil Procedure Code).

Section 22. The Rules for carrying into effect the purposes of this Act shall be formulated by the Ministry of Justice within a period of three months from the date of the passage of this Act, and enforced after approval by the Council of Ministers.

Section 23. The government shall be responsible for the enforcement of this Act.

RULES FOR CARRYING INTO EFFECT THE FAMILY PROTECTION ACT

Section 1. In order to carry into effect the Family Protection Act the Ministry of Justice shall charge one or several branches of the Divisional (or Sharistān) Court in every Division (or Sharistān) with the duty of entertaining the civil disputes arising from matrimonial relations of family litigations. If necessary, special benches may be set up in the Divisional (or Sharistān) Courts for this purpose. The judges appointed for the special courts for entertaining the family disputes should possess suitable qualifications of age, experience and family position for fulfilling such duties.

Section 2. A suit relating to family disputes may be filed verbally or by submitting an application in writing. The application need not be on a printed form.

Section 3. In every case when a suit is filed verbally, the statement of the plaintiff shall be written in the procès-verbal by the copy-writer or the office superintendent (or Reader) of the court, and duly (signed and) endorsed by the plaintiff, and the court shall issue an order for entertaining the application.

Section 4. The court fee in respect of the suit shall be charged to the plaintiff at the time of submission of the application, except when the plaintiff is known as destitute by the court, in which case he or she shall be exempted from the payment of the relevant fees.

Section 5. After the suit has been filed, the court shall, in any manner it deems fit, call both the parties (to be present), within the specified due time and shall also communicate the contents of the (plaintiff's) application and its appendices to the defendant.

In case either of the parties, or both, fail to appear in the court, it shall not preclude the court from taking necessary action and decision on the (plaintiff's) application.

Section 6. In a case where the dispute is referred for arbitration, the court shall ask each of the parties to nominate his or her arbitrator or arbitrators and in case either or both of the parties fail to appear or do not nominate their arbitrator (arbitrators), the court shall itself appoint an arbitrator or arbitrators from among his or her near relatives or persons having a close contact or friendship with him or her, or any other person.

Section 7. In case an arbitrator, or arbitrators, refuse to accept the duty of arbitration, or resign (after once accepting it), the court shall take necessary action for the appointment of a fresh arbitrator, or arbitrators, and in case the new arbitrator, or arbitrators, are also unwilling to accept the duty or (after once accepting it) resign, the court shall directly take up the matter.

Section 8. In case several persons have been appointed as arbitrators, and one of them resigns in the second half of the term of arbitration, his or her resignation shall have no effect on the proceeding, the arbitrator being considered as absentee, and the matter shall be determined by majority of votes.

Section 9. At any stage of the proceedings, whenever the parties agree to the verdict of the arbitrator (or arbitrators), and communicate their mutual agreement to the court, the court shall take direct action and give its judgment.

Section 10. The specimen form of the non-reconciliation certificate shall be prepared by the Ministry of Justice and supplied to the courts.

The pronouncement of the Sîghah (or the prescribed words) of divorce shall be performed after the issue of the non-reconciliation certificate in accordance with (the provisions of) the Civil Code.

Section 11. Addiction to a harmful thing means addiction to any of the narcotic drugs, alcoholic drinks, gambling or the like, which if constantly practiced by a person, is apprehended to cause a damage or a hygienic, material or moral harm to the addicted person or his or her spouse.

Section 12. The amount of maintenance (of the divorced wife) or expenditure on the custody or education of the children shall be determined or assessed in consideration of their present and future requirements as well as the position and circumstances of the parents. In case it is difficult to meet the expenditure, firstly, from the income (and assets) of the father alone, or, secondly, from the income (and assets) of the mother alone, it shall be defrayed from the income (and assets) of both parents.

Section 13. The parents shall have the right to meet their children at least once a month.

Section 14. An employer, whether de jure or de facto, may dispense with the services of a woman only when a court of law has already considered the application of her husband to the effect that the present occupation of the wife is repugnant to the interests and position of the family, and given a judgment in favor of the husband.

Section 15. All Superintendents of the Marriage and Divorce (Registration) Officers shall, before registering a marriage, or calling the parties (for its registration), ask for the preparation of a detailed inventory of the dowry of the wife which shall be signed and endorsed by the husband.

NOTES

(Translations of the relevant extracts of some of the laws referred to, are given below).

[i] In the case of a dispute between a husband and wife over misbehaviour, failure (on the part of the wife) to surrender herself to the embraces of the husband, the maintenance, clothing and residence (of the wife) or expenditure payable by the husband for a child under the custody of the wife, when a suit is filed by either of the spouses, the court may refer the plaint to arbitration.

In case of disagreement between the parties over the appointment of an arbitrator, the court shall appoint (as arbitrators) two persons, from among the near relatives of (each of) the parties, and when they have no near relatives at the place of their residence, from among the persons having a close contact or friendship with them.

The arbitrators shall make all possible endeavour to bring about a reconciliation between the parties. In case of their failure in bringing about a compromise, they shall give their opinion as to which of the parties is on the right, or in respect of the amount of expenditure on (the maintenance of) the wife or (on the custody of) the child (or children), where the dispute is in respect of the expenditure (on the maintenance of) the wife (or the custody of the child or children).

In the case of disagreement between the arbitrators, they may, by mutual agreement, nominate a person as the third arbitrator. In case, however, they disagree on the appointment of the third arbitrator, the court shall appoint one by lot. Thereupon, the matter shall be decided by majority of votes of the arbitrators. At the time of the appointment of the arbitrators, the court shall take into consideration that the persons appointed as arbitrators bear a good moral character.

In case either of the parties has an objection against the verdict of the (arbitrator, or) arbitrators, he or she shall submit to the court his or her objection within one month of the receipt of the notice of the verdict. If in the opinion of the court the objection is reasonable, the court shall consider the matter and give its (own) judgment.

A suit in respect of the aforesaid cases shall be filed in the Divisional (Sharistān) court in the District (Bakhsh) court. (The Civil Procedure Code of Iran, § 676).

The parties to a contract of marriage may (by mutual agreement) provide any stipulation as appended to the contracts of marriage or to any other binding contract, provided the stipulation is not contrary to the very purpose of the contract. They may stipulate, for example, that whenever the husband has been missing, has failed to maintain his wife for a specified period, has made an attempt on her life, or maltreats her in a way that renders (the continuation of) the marital life intolerable (for her), the wife shall, after the establishment of the cause in a court of law and the issue of a final judgment (by the court), be authorized to divorce herself irrevocably (on behalf of the husband) or to delegate such authority to some other person.

Note. All the cases of dispute between a husband and wife falling under this section shall be tried by the courts of first instance in accordance with the Civil Procedure Code. The judgment of the aforementioned courts shall be appealable and revisable. A person may file a suit within six months of the occurrence of the cause (stipulated for), after which the stipulation shall be considered as time-barred.

(The Marriage Act of Iran, § 4).

[iii] A husband or wife who, at the time of contracting a marriage, defrauds the other party in a way that in the absence of that fraud the marriage could not have been contracted, shall be liable to a correctional imprisonment for (a period ranging from) six months to two years. (Ibid.. § 5)

[iv] In fact, according to the provisions of section 4 of the Marriage Act of Iran (quoted above), the wife is already authorized to divorce herself irrevocably, provided the stipulation to this effect had been made in the contract of marriage. It seems that the present act intends to include such cases of divorce among the cases provided under section 1145 of the Civil Code of Iran which reads as follows:

Section 1145. A divorce shall be irrevocable in the following cases:

1. When it is given before the consummation of marriage.
2. When it is given to a *yā'isah* (i.e., a woman who has passed the child bearing age).
3. When it is a *khul'* divorce (i.e., one given on the demand of the wife) or a *mubārāt* divorce (i.e., one given on the mutual agreement of the parties), as long as the woman does not demand the return of the compensation (paid to the husband for obtaining such divorce from him).
4. When it is a third divorce given (by the same husband to the same wife) after three consecutive matrimonial connections, no matter whether the matrimonial connections have been the result of a recall (of the wife by the husband before the expiry of the *'iddah*) or a fresh contract of marriage.

Section 7 of the Iranian Penal Code has divided an offence into the following four kinds (or degrees) according to the severity or mildness of the act:

1. A crime;
2. A big offense;
3. A minor offense; and
4. A contravention.

Further, Section 11 of the Iranian Penal Code provides the following punishment for a contravention (i.e., an offense of the fourth degree):

1. An imprisonment for a period of two to ten days.
2. A fine up to two hundred rials.