



Divorce at the Wife's Request Based on Maintenance Paid from Illegally Acquired Wealth¹

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Introduction

Islam, with its emphasis on earning lawful sustenance and avoiding illicit wealth, underscores the importance of financial purity within the family structure. Accordingly, the husband is obligated to provide for the economic well-being of the family. In line with this, Article 1106 of the Iranian Civil Code assigns the duty of providing maintenance in permanent marriage to the husband. Articles 1129 and 1130 of the Civil Code also stipulate legal consequences for neglecting this obligation.

Nevertheless, the issue of providing maintenance using funds acquired through unlawful means has not been explicitly addressed in statutory law or classical jurisprudence. This study seeks to answer a central question: Can a wife, whose husband provides maintenance using illicit income, request a divorce on the grounds of hardship, non-payment of maintenance, or violation of conditions stipulated in the marriage contract (specifically conditions one and five)? In other words, does the illegitimacy of the financial source constitute a refusal to fulfill the duty of maintenance, thereby justifying the wife's petition for divorce?

Literature Review

1. The present article is extracted from a Master's thesis titled "Jurisprudential-Legal Dimensions of Spending Illicit Property in the Iranian Legal System" at Imam Sadiq (AS) University.

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While numerous studies have examined the issue of unlawfully acquired wealth, they have predominantly focused on the criminal dimensions of the issue, rather than its familial implications. For instance, Masoumeh Firooznejad's research on the jurisprudential and legal analysis of illicit wealth primarily investigates the elements of the crime and the ambiguities in the law. Similarly, Hossein Gholi-Tabar and Mehdi Shirzadi, in separate studies, analyzed Article 2 of the Law on the Intensification of Punishment for Perpetrators of Bribery, Embezzlement, and Fraud.

What sets the present study apart is its examination of the impact of illicit income and its legal consequences within the context of family relationships, especially regarding spousal maintenance and divorce. The legal and research gap in this area further underscores the necessity of addressing the issue.

Methodology

This research adopts a descriptive-analytical approach, examining jurisprudential sources, statutory texts, and existing legal practice concerning maintenance paid from illegitimate sources. Data was collected through library research and analysis of jurisprudential opinions, legal texts, and scholarly commentary.

Findings

The findings indicate that while Iranian law does not explicitly stipulate that maintenance must come from lawful sources, jurisprudential and ethical reasoning treats the use of lawful wealth as imperative. The major findings of the study are summarized as follows:

1. Maintenance from Illicit Wealth as a Form of Refusal to Pay Maintenance:
Although the law does not explicitly require that maintenance be paid from lawful income, based on jurisprudential principles and prevailing social norms, providing maintenance from unlawful income may be interpreted as a de facto refusal to pay maintenance. Consequently, under Article 1129 of the Civil Code, the wife may lawfully request a divorce.
2. Hardship (ʿUsr wa Ḥaraj) Caused by Illicit Maintenance:
Article 1130 of the Civil Code does not provide an exhaustive list of hardship conditions, thereby granting judges discretion based on the specific circumstances. A wife who experiences psychological

or spiritual distress from the use of unlawful income may establish the grounds for hardship and request judicial divorce.

3. **Violation of the Fifth Condition in the Marriage Contract:** In many standard marriage contracts, a clause grants the wife power of attorney to divorce herself if the husband commits actions contrary to the interests of the family. Since acquiring illicit wealth not only harms family interests but also undermines the wife's dignity, such conduct may be deemed a violation of the fifth condition, entitling the wife to seek divorce.
4. **Need for Legal Reform and Clarity:** One of the key findings is the ambiguity surrounding the legality of the source of maintenance, which can lead to legal disputes and varied interpretations. It is therefore recommended that legislators amend existing laws to explicitly require that maintenance be provided from lawful financial sources.
5. **The Role of the State and Relevant Institutions:** Given the sensitivity of the issue, the state should implement preventive measures through education, oversight, and the creation of lawful employment opportunities to reduce the economic pressures that lead to illicit income. Additionally, the judiciary should assist judges by issuing interpretive circulars and advisory opinions to ensure consistent legal application.

Conclusion

Providing maintenance to the wife is a binding obligation on the husband, supported by both legal and penal enforcement. However, such maintenance must not be sourced from illicit wealth, as consumption of unlawful income, according to Qur'anic verses and narrations, has detrimental consequences on the individual's life. If the husband refuses to provide maintenance from lawful sources and cannot be compelled to comply, the wife may seek divorce under Articles 1129 and 1130 of the Civil Code, or invoke the fifth condition in the marriage contract.

At the same time, in light of Islamic teachings and legal emphasis on preserving family stability, the state is duty-bound to take all necessary measures to eliminate the need for illicit earnings. Divorce should be viewed as a last resort when all other remedies fail to alleviate the wife's hardship. Furthermore, incorporating the findings of this research into law, as well as elaborating on them through jurisprudential reasoning and legal

theory, and issuing relevant advisory opinions on the use of illicit wealth for maintenance, could enhance Iran's family law framework and help establish consistent judicial practice in family disputes.

Keywords: Wife's maintenance, hardship, illicit wealth, judicial divorce, unlawful income

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