

Comparative wife alimony enforcement perspective Khamse jurisprudence, law of Iran and Egypt

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Abstract: The most important issues of family law, which appears in all stages of life, both during marriage and after its dissolution, both in relation to his wife and children and other relatives in relation to the issue of "alimony". In terms of jurists and lawyers wife alimony is: life needs a wife whose husband is legally obligated to pay as food, clothing, housing, child support enforcement is twofold wife: 1) guarantees 2) criminal sanction. The first should be enforced through the courts required the husband to pay alimony and if it is not possible to divorce the obligation to pay alimony times that divorce can be done through the courts. The criminal sanction regime could afford to have someone to support, his wife alimony if not deign to 74 lashes and the guarantee of present or future maintenance. Egypt also follows the same rules and theories of famous scholars of public support, including food, clothing, and housing knows. In Khamse, where is helpless husband, the rules governing the collection and maintenance requirements and the inability of the husband of the minimum food and attempted to terminate the marriage and the divorce decree is issued. Due to the nature of research paper topic, once completed and coordinate maintenance and guarantee that the views expressed in it. This is especially jurists and lawyers presented followed by some good justification for this are Khamse jurisprudence in Iran and Egypt. The legal feasibility of this debt as a result of maintenance in accordance with the law of the husband and the husband is obliged to pay it.

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Introduction:

Since parity clot causing the emergence of personal, social, economic and legal for each of the men and women and the rights and obligations of married couples to be together and each of them parallel to the rights and benefits of marriage are also obliged to do homework. In Islamic law and the rights of man is responsible for the payment of alimony and living expenses. Caucus rights, alimony origin of the name of charity to give up. Spend on civil rights is the "cost of food and clothing and home furnishings and garments to meet the need and ability to spend that much (about alimony relatives) and food and clothing and housing on common house servant about the situation faced" the cost of maintenance wife".

Term maintenance of family support, child support and alimony imprisoned wife goes to work. Article 1107 of the Civil Code says "Alimony is reasonable and fits all the needs of women, such as housing, clothing, food, furniture, and home health care costs and server if used or needed by a deficiency or disease." The amendments are adopted in 2002. What are the criterion alimony, time and place of conventional and unconventional couple's life? Woman enjoying the support is not absolute and unconditional right to receive alimony and women, as there is a duty to obey. Article 1112 of the Civil Code confirms this means.

Maintenance of permanent marriage and

temporary marriage for a woman is not entitled to alimony, alimony unless it is provided in the contract, so that Article 1107 of the Civil Code, as examples of the above alimony is not a monopoly of the implications of every such Allegorically the criteria USAGES location and condition of the woman's arms, but he must also be taken into account and considered her financial situation.

In this article we will discuss the attributes and coordinate maintenance and enforcement of law is that the descriptive and analytical approach to answer the following questions: Which woman alimony can be referred to the governing divorce based on 1207 article?

Alimony (also called aliment (Scotland), maintenance (England, Northern Ireland, Wales, Canada), spousal support (U.S., Canada) and spousal maintenance (Australia)) is a legal obligation on a person to provide financial support to his or her spouse before or after marital separation or divorce. The obligation arises from the divorce law or family law of each country. Traditionally, alimony was paid by a husband to his former wife, but since the 1970s there have been moves in many Western countries towards gender equality with a corresponding recognition that a former husband may also be entitled to alimony from his former wife. The Code of Hammurabi (1754 BC) declares that a man must provide sustenance to a woman who has borne him

children, so that she can raise them:

If a man wish to separate from a woman who has borne him children, or from his wife who has borne him children: then he shall give that wife her dowry, and a part of the usufruct of field, garden, and property, so that she can rear her children. When she has brought up her children, a portion of all that is given to the children, equal as that of one son, shall be given to her. She may then marry the man of her heart.

Alimony has also been discussed in the Code of Justinian. The modern concept of alimony is derived from English ecclesiastical courts that awarded alimony in cases of separation and divorce. *Alimony pendente lite* was given until the divorce decree, based on the husband's duty to support the wife during a marriage that still continued. *Post-divorce* or *permanent alimony* was also based on the notion that the marriage continued, as ecclesiastical courts could only award a *divorce a mensa et thora*, similar to a legal separation today. As divorce did not end the marriage, the husband's duty to support his wife remained intact liberalization of divorce laws occurred in the 19th century, but divorce was only possible in cases of marital misconduct. As a result, the requirement to pay alimony became linked to the concept of fault in the divorce. Alimony to wives was paid because it was assumed that the marriage, and the wife's right to support, would have continued but for the misbehavior of the husband. Ending alimony on divorce would have permitted a guilty husband to profit from his own misconduct. In contrast, if the wife committed the misconduct, she was considered to have forfeited any claim to ongoing support.

However, during the period, parties could rarely afford alimony, and so it was rarely awarded by courts. As husbands' incomes increased, and with it the possibility of paying alimony, the awarding of alimony increased, generally because a wife could show a need for ongoing financial support, and the husband had the ability to pay. No-fault divorce led to changes in alimony. Whereas spousal support was considered a right under the fault-based system, it became conditional under the no-fault approach. According to the, marital fault is a "factor" in awarding alimony in 25 states and the District of Columbia. Permanent alimony began to fall out of favor, as it prevented former spouses from beginning new lives, though in some states (e.g., Massachusetts, Mississippi, and Tennessee), permanent alimony awards continued, but with some limitations. Alimony moved beyond support to permitting the more dependent spouse to become financially independent or to have the same standard of living as during the marriage or common law marriage, though this was not possible in most cases.

In the 1970s, the United States Supreme Court

ruled against gender bias in alimony awards, and the percentage of alimony recipients who are male raised to 3.6% in 2006. In states like Massachusetts and Louisiana, the salaries of new spouses may be used in determining the alimony paid to the previous partners. Most recently, in several high-profile divorces, females such as have paid multimillion dollar settlements in lieu of alimony to ex-husbands who were independently wealthy. According to lawyers, males are becoming more aggressive in the pursuit of alimony awards as the stigma associated with asking for alimony fades.

Where a divorce or dissolution of marriage (civil union) is granted, either party may ask for post-marital alimony. It is not an absolute right, but may be granted, the amount and terms varying with the circumstances. If one party is already receiving support at the time of the divorce, the previous order is not automatically continued (although this can be requested), as the arguments for support during and after the marriage can be different.

Unless the parties agree on the terms of their divorce in a binding written instrument, the court will make a determination based on the legal argument and the testimony submitted by both parties. This can be modified at any future date based on a change of circumstances by either party on proper notice to the other party and application to the court. The courts are generally reluctant to modify an existing agreement unless the reasons are compelling. In some jurisdictions the court always has jurisdiction to grant maintenance should one of the former spouses become a public charge.

In the U.S. state law establishes requirements regarding alimony (and child support) payments, recovery and penalties. A spouse trying to recover back alimony sometimes may use only the collection procedures that are available to all other creditors (such as reporting the amount due to a collection agency).

One who allows his or her alimony obligations to go into arrears, where there is an ability to pay, may be found in contempt of court and be sent to jail. Alimony obligations are not discharged as a result of the obligee filing bankruptcy. Ex-spouses who allow child-support obligations to go into arrears may have certain licenses seized, be found in contempt of court, and/or be sent to jail. Like alimony, child-support obligations are not discharged as a result of the obligee filing bankruptcy.

Alimony is not child support, where, after divorce, one parent is required to contribute to the support of their children by paying money to the child's other parent or guardian. Considered a payment that a parent is making for the support of their offspring, the parent who pays child support pays the

taxes. However, alimony is treated as taxable income, in most countries, to the receiving spouse, and, in most cases, deducted from the gross income of the paying spouse.

The determination of alimony varies greatly from country to country and from state to state within the U.S. Some state statutes, including those of Texas, Montana, Kansas, Utah, Kentucky and Maine, give explicit guidelines to judges on the amount and/or duration of alimony. In Texas, Mississippi and Tennessee, for example, alimony is awarded only in cases of marriage or civil union of ten years or longer and the payments are limited to three years unless there are special, extenuating circumstances. Furthermore, the amount of spousal support is limited to the lesser of \$2,500 per month or 40% of the payee's gross income. In Delaware, spousal support is usually not awarded in marriages of less than 10 years. In Kansas, alimony awards cannot exceed 121 months. In Utah, the duration of alimony cannot exceed the length of the marriage. In Maine, Mississippi, and Tennessee alimony is awarded in marriages or civil union of 10 to 20 years and the duration is half the length of the marriage barring extenuating circumstances. Other states, including California, Nevada and New York, have relatively vague statutes which simply list the "factors" a judge should consider when determining alimony (see list of factors below). In these states, the determination of duration and amount of alimony is left to the discretion of the family court judges who must consider case law in each state.

In Mississippi, Texas and Tennessee, for example, there are 135 Appellate Cases in addition to 47 sections of State Statute that shape divorce law. As a result of these Appellate Cases, for example, Mississippi judges cannot order an end date to any alimony award. In 2012, Massachusetts signed into law comprehensive alimony reform. This law sets limits on alimony and eliminates lifetime alimony. In New Jersey, there is no predetermined formula for calculating alimony. Instead, the amount decided by the court can be based on several factors, including the ability to pay alimony, duration of the marriage, physical and emotional health of the parties, standard of living enjoyed by the couple while they were married, earning capacities, educational levels, employability or if one party had to forgo further education or a career opportunity for the sake of the marriage.

In general, there are four types of alimony. **Temporary alimony:** Support ordered when the parties are separated prior to divorce. Also called *alimony pendente lite*, which is Latin, meaning, "pending the suit".

1. **Rehabilitative alimony:** Support given to a lesser-earning spouse for a period of time necessary to acquire work outside the home and become self-sufficient.

2. **Permanent alimony:** Support paid to the lesser-earning spouse until the death of the payor, the death of the recipient, or the remarriage of the recipient.

3. **Reimbursement alimony:** Support given as a reimbursement for expenses incurred by a spouse during the marriage (such as educational expenses).

Some of the possible factors that bear on the amount and duration of the support are: Divorce law in the U.S. was based on English Common Law, which developed at a time when a female gave up her personal property rights on marriage (see *Cverture*). Upon separation from marriage, the husband retained the right to the wife's property, but, in exchange, had an ongoing responsibility to support the wife after dissolution of the marriage. British law was amended by legislation including Married Women's Property Act 1870 and Married Women's Property Act 1882 which reformed females' property rights relating to marriage, by, for example, permitting divorced females to regain the property they owned before marriage.

State reform initiatives

Some states are moving away from permanent alimony awards that are intended to maintain a spouses' standard of living enjoyed during the marriage and are moving towards durational or rehabilitative alimony. In other states, like Mississippi, Massachusetts and Tennessee, alimony is usually awarded for life.

Some of the critical issues that proponents and opponents of alimony reform disagree upon are:

- Whether alimony should be temporary or permanent
- Regardless of duration, should alimony payees have the unquestionable right to retire? Does the lesser earning spouse deserve alimony to meet his/her basic needs (sustenance) or to enough to sustain "the lifestyle accustomed to during the civil union or marriage"?
- Should the income and assets of a new spouse be used in determining how much alimony gets paid?
- How clear and prescriptive should state statutes be versus allowing a larger degree of Judicial Discretion?

In several US states, including Pennsylvania, Oklahoma and New Jersey, some lawmakers are attempting change of divorce laws as they pertain to alimony. Massachusetts law provided for lifetime alimony, but in early 2009 a reform bill (HB 1785) backed by a group called "Mass Alimony Reform"

gained 72 state representatives as co-sponsors (of a total of 200 Representatives and Senators). HB 1785 would have required a spouse receiving alimony to become self-sufficient after a reasonable time. It would have established alimony as a temporary payment instead of a permanent entitlement. This law would also have addressed the issue of cohabitation – where the alimony recipient is living with, but not married to a new significant other. The Massachusetts bill failed to garner sufficient support and it was not adopted during the 2009–2010 session. In January 2011, the bill was filed with the Massachusetts legislature. It was passed unanimously by the legislature and signed into law on September 26, 2011. The law, which took effect on March 1, 2012, provides for different categories of alimony, and limits the duration of alimony. In New Jersey, a group called "New Jersey Alimony Reform" was established in 2011 to encourage and promote similar reforms to alimony reforms within the state. In 2012, a group called New Jersey Women for Alimony Reform was established to promote Alimony Reform in New Jersey. In 2012, bills were introduced in the NJ Assembly and Senate. The Assembly passed a bill calling for a Blue Ribbon Commission to address Alimony Reform. The Senate has a similar bill pending that has not yet been posted in the Judiciary Committee. The NJ Matrimonial Bar Association has been vehemently fighting against Alimony Reform, lead by Patrick Judge, Jr. chairman of the Family Law section of the New Jersey State Bar Association. This stated position is contrary to the opinions shared by many in the legal community in New Jersey. Mr Judge in fact lobbied strongly to remove any presence of Alimony Reformers on the Blue Ribbon Commission.

In Connecticut, a group called "Connecticut Alimony Reform" was also established in 2011 to encourage and promote similar reforms to alimony reforms within the state of Connecticut.

In Maine, a "no-fault" divorce state, Statute §951-A provides that for marriages or civil union of between 10 and 20 years, alimony is limited to a period equal to half the length of the marriage. In Texas, another no-fault state, alimony Section 8.054 limits alimony (in marriages or civil union less than 20 years) to a maximum duration of three years.

In Florida, a group called "Florida Alimony Reform" was also established in 2011 to encourage and promote similar reforms to alimony reforms within the state of Florida. A comprehensive Alimony Reform bill passed the Florida House in 2012 but died in the Senate. In 2013, both the Florida House and Senate passed a comprehensive alimony bill sponsored by Sen. Kelli Stargel, which was vetoed by Governor Scott at the end of the legislative session. As in New Jersey, the Florida Matrimonial Bar, lead by

Carin Porras, Chair, Family Law Section of The Florida Bar strongly opposes reform.

California, Connecticut, Georgia, Illinois, Oklahoma, New York, South Carolina, Tennessee, Utah, and West Virginia have all passed laws that allow for the modification or termination of alimony upon demonstration that the recipient is cohabitating with another person. In April 2009, the Governor of New Jersey, Jon Corzine, signed into law changes in the alimony statutes for his state which would bar alimony payments to parents who kill, abuse, or abandon their children.

Oregon Alimony Reform (OAR) was established in January 2012. The organization was created to foster a more fair and equitable approach to alimony awards and subsequent modification proceedings. OAR expects to have a bill on the floor of the Oregon Senate in the 2013 legislative session. Co-directors are Jennifer Lexa and Robin DesCamp.

In South Carolina, an organization called South Carolina Alimony Reform was established in 2011 by Wyman Oxner with the help of Representative Jerry Govan (Orangeburg). The legislative goals of the organization include supporting self-sufficiency and independence for the lower-earning spouse through alimony payments that continue during a transition period, which lasts more than a decade in long-term marriages; maintaining appropriate judicial discretion to fairly judge unique circumstances where the lower-earning spouse is physically or mentally unable to work to gain self-sufficiency, continuing alimony payments in special cases, and only until no longer needed; ending lifelong alimony dependency, allowing each party of the divorce to move-on with independent lives; obtaining retirement rights for alimony payers, the same rights enjoyed by all other citizens; protecting second wives from current case law, which requires judges to fully investigate second-wives' income and assets; ending expensive legal battles over vague alimony laws and interpretations; and having a durational alimony so people can retire at a reasonable age with a safety valve for those that really need alimony. Like other states with reform initiatives, the Second Wives and Partners Club are active in prompting reform in South Carolina. SC Alimony Reform's membership is growing, and its leadership intends to have a bill on the floor of the South Carolina General Assembly in the 2015 legislative session.

Types of spousal support

In Canada, spousal support may be awarded upon divorce, under the federal *Divorce Act*, or upon separation without divorce under provincial statutes. There are generally three different forms of spousal support awarded:

1. Compensatory support – This form of support compensates an individual for her or his contributions to the relationship as well as for any losses that individual has suffered;

2. Non-compensatory support – In some cases support may be awarded on a needs basis. This form of support may be awarded by a Court where an individual is sick or disabled; and

3. Contractual support (divorce agreement) – This form of support upholds a contract between the parties which governs support payments.

Married spouses and common-law spouses

Both married spouses and common-law spouses may be entitled to spousal support. An important distinction between the two is that common-law spouses must start an action claiming spousal support within one year of the breakdown of the relationship. A second important distinction is that only married couples may divorce under the federal *Divorce Act*, common-law spouses may only separate under provincial legislation, such as Ontario's *Family Law Act* or British Columbia's *Family Relations Act*. No such limitation arises for married individuals. In addition to being in a marriage or common-law relationship, courts will look at the conditions, means, needs and other circumstances of each spouse. This includes:

1. The length of time the spouses cohabited;
2. The functions performed by each spouse during the relationship; and
3. Any existing orders or agreements.

This is by no means an exhaustive list of factors which the court will consider when determining entitlement. Each case is determined on its own unique set of circumstances.

Factors for awarding spousal support

The federal *Divorce Act* at s.15.2 (6) states that there are four objectives of spousal support orders:

1. Recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
2. Apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
3. Relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
4. In so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Amount and duration

The longer the length of cohabitation and the greater the disparity between each party's incomes, the larger an award of spousal support will be and the longer the duration will be. As stated above, spousal

support calculations are complex. There are no tables to use as in child support calculations. Lawyers use special software designed specifically to calculate the entitlement, amount, and duration of support. After information is input into a computer, the software will provide a range for the spousal support amount and duration. Depending on the means and needs of the individual receiving support, the court will generally award an amount of spousal support somewhere within the range provided by the software. The longer the relationship, the greater the presumption that the parties should have an equal standard of living. Similarly, the length of the relationship will be taken into account when determining how long spousal support should be paid for. Awards for spousal support can be for a limited term or indefinite. While declaring bankruptcy does not absolve Canadians of obligations to pay alimony or child support, a 2011 ruling by the Supreme Court of Canada established that under current laws "equalization payments agreed to as part of a divorce are considered debts, and are wiped off a person's balance sheet when they declare bankruptcy."

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