

Spousal Financial Claims in Iranian Law: An Analysis of Ujrat al-Mithl and Nihlah

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ABSTRACT

Ujrat al-mithl refers to compensation that a husband pays his wife in exchange for tasks she performs in his household, which she is not religiously obligated to undertake. Nihlah is another right granted to Muslim women under specific conditions. This article examines ujrat al-mithl and nihlah in light of the Family Protection Law, addressing the following question: What is the legal standing of ujrat al-mithl and nihlah for a wife according to Islamic jurisprudence (fiqh) and the Family Protection Law? The findings indicate that prior to the enactment of the amendment to Article 336 of the Civil Code, a wife could only demand ujrat al-mithl at the time of divorce. However, the legislature, recognizing ujrat al-mithl as a wife's right, established specific conditions for its claim through the aforementioned amendment. Nevertheless, despite the passage of the new Family Protection Law, the issue of the wife's intent (qasd) or lack thereof to perform tasks gratuitously (tabarru') remains a major source of dispute regarding claims for ujrat al-mithl. As for nihlah, despite the repeal of Note 6 of the Single Article of the Law Amending Divorce Regulations (1992)—except for clause (b)—it remains enforceable as a safeguard against the abuse of the right to divorce (haqq al-talāq).

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Introduction

In the Iranian legal system, the family is recognized as the fundamental unit of society, with its foundations laid out in Article 10 of the Constitution of the Islamic Republic of Iran. This framework is grounded in Islamic law and ethics, aligned with the Iranian–Islamic social ethos, and consistent with human nature. It not only strengthens the emotional bonds between spouses but also safeguards their rights within the framework of Sharia principles. The detailed regulation of this institution has been delegated to ordinary laws.

In Islamic jurisprudence, the basis for *ujrat al-mithl* (compensation for domestic services) rests on the principle of the sanctity of a Muslim’s work—prohibiting the exploitation of another’s labor without compensation—and on the rule of respect (*qa’idat al-ihtiram*), both of which are emphasized in transmitted traditions and established legal custom (*‘urf al-‘uqalā’*). With regard to *nahla* (a gratuitous payment or gift), factors such as the duration of marital life and the husband’s financial capacity are considered significant. These concepts are reflected in Article 336 of the Civil Code and Article 32 of the Family Protection Act as the principal statutory provisions.

Under Note 6 of the Single Article of the Law on the Amendment of Divorce Regulations (1992), a wife could claim *ujrat al-mithl* only upon meeting specific conditions and at the time of divorce; otherwise, *nahla* was granted as a substitute. The 2006 amendment to Article 336 of the Civil Code expanded this right, allowing women to claim *ujrat al-mithl* during the subsistence of marriage. Ultimately, the 2013 Family Protection Act recognized *ujrat al-mithl* as an independent right alongside the *mahr* (dower), in line with jurisprudential principles. By recognizing this right without the restrictive conditions set out in the earlier Note 6, an essential question arises: what is the current legal status of *nahla* in the Iranian legal framework—especially given that its payment remains contingent upon certain conditions, such as the husband’s abuse of the right to divorce?

Methodology

This study adopts a descriptive–analytical approach, utilizing library-based research methods.

Findings

The claim for *ujrat al-mithl*—as explicitly recognized under Note to Article 336 of the Civil Code—is an established financial right of the wife, irrespective of the existence of financial stipulations between the spouses or the occurrence of divorce. This position is supported by a number of jurists and is considered irrefutable under the jurisprudential maxim “respect for a Muslim’s property and labor.” Legislative emphasis on this right in the Family Protection Act (2013)—which places *ujrat al-mithl* alongside *mahr* and maintenance (*nafaqah*) as the wife’s financial rights—underscores its elevated

status in Iranian law. In practice, the registration of a divorce is contingent upon the payment of *ujrat al-mithl* as determined by the court, unless the wife expressly consents otherwise. This approach reflects the legislature's intention to treat *ujrat al-mithl* not as a discretionary privilege but as an inherent right of the wife.

Conclusion

Under the current legislative framework, *ujrat al-mithl* is no longer considered merely a safeguard against the husband's abuse of the right to divorce. In contrast, *nahla* could function as a supplementary legal mechanism to address such abuse. Consequently, it is conceivable that a wife may claim both *ujrat al-mithl* and *nahla* concurrently.

Judicial practice, however, reveals no unified approach regarding the burden of proof in claims for *ujrat al-mithl*. Depending on the case, the burden is assigned either to the wife or the husband. Divergent views have emerged concerning the presumption of non-gratuity (*adam al-tabarru'*):

The majority opinion, based on paragraph (a) of Note 6 of the repealed 1992 divorce law, holds that although the default presumption is non-gratuity, the statutory requirement of proof for the court constitutes an exception, placing the burden on the wife.

The minority opinion contends that given the presumption of non-gratuity and the inherent difficulty of proving a negative, the party alleging gratuity (the husband) must establish the wife's intention to waive compensation.

Another view maintains that where gratuity is contingent upon the continuation of marital life, the wife's right to *ujrat al-mithl* arises upon divorce.

Despite these differences, most courts have relied on the presumption of non-gratuity, while a few have adopted the intention of gratuity as the decisive factor. Some legal scholars argue that accepting the presumption of the wife's gratuity would render paragraph (a) of Note 6 effectively redundant. Overall, the principal jurisprudential basis for awarding *ujrat al-mithl* remains the maxim of "respect for a Muslim's property," under which any act performed at another's request with recognized economic value, absent the intention of gratuity, requires compensation at the prevailing rate.

The legislative trajectory in Iran has evolved as follows:

1992 Divorce Law Amendment: *Ujrat al-mithl* could be claimed only if the marriage contract lacked a financial condition, the divorce was not initiated by the wife, and the wife had not engaged in misconduct.

2006 Reform: The right was recognized regardless of divorce conditions.

2013 Family Protection Act (Article 29): *Ujrat al-mithl* was placed on par with *mahr* and *nafaqah*, and payment was made a prerequisite for registering a divorce.

With the repeal of paragraph (a) of Note 6 and the enactment of the 2013 Family Protection Act, it appears that the legislature—drawing from Imami jurisprudence—has grounded *ujrat al-mithl* in the principle of “benefit from another’s act” (*istifā’ min ‘amal al-ghayr*). This approach extends to the marital relationship itself (subject to conditions such as asset division), unlike previous practice, which limited the right to divorce situations. The Note to Article 336 of the Civil Code, alongside the Family Protection Act, therefore reflects a more coherent and equitable stance in safeguarding the wife’s financial rights.

It is strongly recommended that the Iranian legislature, informed by the legislative experiences of other jurisdictions—particularly Islamic countries—address existing ambiguities regarding claims for *ujrat al-mithl* by codifying clear criteria. Such a framework should incorporate considerations such as the duration of marriage and define the minimum and maximum compensable amounts under the concept of *nahla*. This approach would not only prevent the erosion of women’s financial rights but also provide an effective safeguard against the misuse of the right to divorce.

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