



Investigating Jurisprudence Decree of Dowry

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Abstract: In Iran, Dowry is based on tradition and religion, as it cannot be found in Western law. Woman's dowry or condescension relationship cannot be compared with change and exchange relationship in national contracts. Woman does not sell herself with dowry, but affiances a man and its coercive effect is man's obligation to pay dowry. That is why the cancellation and invalidation of dowry will not eliminate marriage and not exempt woman of her duties. Hence, the present study examines jurisprudence decree, history, quantity, psychological effects, economic functions, and types of dowry in verses and hadiths. It also investigates the following matters: why does man is obligated to pay dowry? what can be considered as dowry? and in case of failure in dowry payment, if marriage is void or not? and what is dowry status in Islam?

Keywords: Dowry, Surah "Nisa", Sidaq, Woman.

INTRODUCTION

Islam has provided precious gift as dowry for woman, which is paid by man. The gift is not considered ownership of woman or dominance over her, but a sign of appreciation; hence, in verse no. 4 of Surah "Nisa", "Sidaq" term is used rather than dowry, meaning honesty and trustfulness; and obligation to pay dowry is indicator of friendship and love of man. Qur'an names dowry as a gift (Nahleh). Dowry and woman's modesty have one root. Inspired by nature, woman noticed that her respect is in that she does not sell herself freely, but sell herself so-called "sweet". Despite her physical disability, this matter has caused woman takes man's attention as a suitor; forces him to compete with other men; by removing herself far from man's access, creates romantic love; and when marry a man, receives the gift which is indicator of man's honesty. Although much dowry is useful in avoiding divorce, it is unblest. On the other hand, so little dowry is hateful. Now these questions arise that whether marriage without dowry is void or not? what can be considered as dowry? And what are dowry types and their terms?

Literal Meaning of Dowry

Terminology scientists have mentioned several meanings for "dowry" term. The term has mentioned in Almanjar as "Mahr mahran Almarat" meaning "grant her dowry". Words such as Alsidaq, Alsidaqeh, Alnahleh, Alnikah, Alfarizah, and Altowl are equivalent terms used for woman dowry (Mahmudi, 2000: 124).

"Sadoqah" is also equivalent of "dowry" whose plural in Qur'an is "Hoqoqat"; meaning pay woman's dowry which is a gift from God. By paying dowry, man indicates love, truth, and respect to woman and obeys God's command (Sharfoddin, 2002: 124).

Terminological Meaning of Dowry

Dowry is something, financially or non-financially, which man should grant woman on marriage. In civil law, there is no definition for dowry. However, according to Article 1078 "anything that has property and is owned" can be considered as dowry (Mahmudi, 2000: 130).

Definition of Dowry

Dowry or Sidaq, named "Kabin" or "Dast peyman" in Persian, is a property woman owns on marriage; man is required to grant dowry her.

"Mahr" is a substance of a general rule whose design has been flowed in the context of creation and has been made by hand (Mahmudi, 2000: 130).

History of Dowry

One of the ancient traditions in human relations backs to marriage, when a man provides "dowry" for woman; that is, he pays something of his own property to woman or her father. In addition, during the marital life, he is responsible for all expenses of woman and children (Motahari, 2013: 180).

Philosophy of Dowry

On the philosophy of dowry, some points are understood from Qur'an and hadiths, which mentioning them is helpful in discussing on the necessity or lack of necessity of dowry adjustment. What is suggested from primary jurisprudence sources about the cause of determining dowry are as follows:

A) Donative Granting: Qur'an has interpreted dowry as "Sidaq" which is paid woman as "Nahleh". The term "Sidaq" is from the root "Sedq"; meaning the trustfulness and honesty of man's love towards his wife. The term "Nahleh" is interpreted as granting or donating. The interpretation offers that dowry has no meaning except "gift". Dowry is not woman's value, and by granting it, man has no dominance on woman (Hedayatnia ganji, 2007: 131).

B) Compensation Granting: Other interpretation of dowry in Qur'an is compensation. According to Qur'an's narrative about marriage of Moses and Shoaib's daughter, Shoaib says: I will one of my daughters (one of two) marry you while her dowry will be eight years of servicing me.....

In this verse of Qur'an, dowry is interpreted as "remuneration". A benefit for another benefit is interpreted as remuneration. In this regard, woman's dowry is compensation for loss of virginity. Some narratives have been mentioned on this matter. In answer to a question of philosophy and reason for dowry necessity, Imam Reza (hello to him) says: (Hedayatnia ganji, 2007: 132):

Woman sells herself and man is her customer and no selling is fulfilled without paying for it. Dowry is obligatory for men, not women; because this is equivalent to "Estemna (sexual enjoyment)"; that is, when the sexual needs of man are satisfied, he gets up and does not wait for woman to be satisfied. Hence, dowry is obligatory for men, not women. Accordingly, dowry can be considered as compensation granting.

If man pays woman dowry willingly in early days of marriage, proves his claim of love and loyalty to woman. That is why some commentators have considered dowry multi-purposes; that is, in addition to expression of affection between man and woman, woman's financial and sexual frustrations are compensated (Hedayatnia ganji, 2007: 134-135).

Dowry Interpretations in Qur'an

The Holy Quran was not invented dowry; but dowry was innovation of the creation. What Qur'an performed was that it returned dowry to its state of nature. The term "dowry" has not been used in Qur'an; instead, the term "Sidaq" has been employed and defined as follows: it is something which man gives woman on marriage.

In Surah Nisa verse 4, Holy Qur'an expresses with unparalleled elegance: "grant own woman dowry as gift or debt" (Motahari, 2013: 188). This verse shows that:

1. Dowry is indication of honest interest of man to his wife;
2. Dowry belongs to woman, not her parents and brothers; it is not the value paid for growing daughter. The Holy Qur'an abolished tradition of ignorance period (pre-Islam period) about the dowry, according to which parents considered their daughter's dowry as their own remuneration.
3. The term "Nahleh" in this verse, implies that dowry is not anything but a gift; hence, remark of those who believe dowry is daughter's value is rejected. In addition to Sidaq, other interpretations such as "Ajoor" or "Farisah" have been used in Qur'an (Motahari, 2013: 189).

Dowry Evidences in Verses and Hadiths

A) Qur'an: in some verses, the Holy Qur'an outlines the various aspects of dowry and the necessity of paying for it; however, Qur'an does not use the term "dowry", instead introduces it by different interpretations such as "Sidaq", "Mata", "Farizah", "Ajr", and "Nahleh".

In Surah Nisa verse 4, Almighty Allah says: pay for woman's dowry while you are gaiety and if she forgives you some part of it, accept it sweetly (Sharafuddin, 2002: 103).

Verse 4 of Surah Nisa is considered the most outspoken and most clear one. That is why the major issues raised by commentators about the dowry, concentrate on this verse.

In this section, we quote one of the most comprehensive and expressive interpretations presented in the form of several propositions:

1. The obligation to pay the dowry;
2. Woman is the owner of her dowry;
3. Woman's financial independence indicates need to pay dowry to woman herself, not someone else; hence, dowry should be paid to woman, not her father or brother; the issue which was customary in the period of Ignorance (pre-Islam);
4. Dowry is a gift granted by man. The word "Nahleh" in this verse means donation or gift;
5. Dowry is considered a debt which man is responsible for paying it. Some commentators interpreted it as prescription;
6. The necessity of paying dowry willingly and without conferring an obligation upon woman;
7. Woman can forgive part of her dowry to the husband;
8. Prohibition of capturing dowry without woman complete satisfaction;
9. Determination of dowry at the time of marriage;
10. Donation alludes to the complete domination of the property, not some part of it;
11. Owner's consent is the license for capturing one else's property; forgiving dowry by woman is lawful and legitimate (Sharafuddin, 2002: 105);
12. God orders woman not to forgive all her dowry. Seemingly, "forgiving some part of dowry" suggests that it is better for woman not to forgive all dowry, but part of it (if she want);
13. If allowed by woman, the husband can use her property;
14. Woman's parents are prohibited from receiving dowry. In this matter, Imam Baqir (hello to him) says: God's audience is woman; God has forbidden woman's parents from receiving dowry (Sharafuddin, 2002: 105).

This verse seems to be the most explicit one about dowry. The word "sadaqatohonna" in this verse suggests the necessity of paying dowry in marriage traditions has been common among people. Commonly, man

seeking marriage, not woman; so, he must pay dowry. In any case, what derives from this verse, confirms the common matter among people (Sharafuddin, 2002: 105).

B) Tradition: several hadiths have been proposed about the necessity and importance of determining dowry in marriage, moral and legal obligation to pay for it, and prohibiting man from neglecting it. Some of hadiths on this matter are mentioned as follows:

1- About a woman who did not demand dowry, Imam Sadiq says: marriage without dowry is only for The Prophet Mohammad (Hello to him), but for others, this is not permissible; unless something is paid before marriage, much or little or one dirham.

2. The Prophet Mohammad says: in the Day of Judgment, Allah forgives every sin except do not paying woman's dowry.

3. Imam Sadiq says: Every man who marries a woman while intend not to pay her dowry, as if he has already committed adultery.

4- Imam Ali says: the most deserve condition which should be satisfied is paying woman's dowry (Sharafuddin, 2002: 108).

5-Imam Sadiq says: The most heinous sins are three: murdering, refraining from paying woman's dowry, and refusing to pay for bondman (Sharafuddin, 2002: 109).

Dowry in Islam (True Philosophy of Dowry)

It seems that true philosophy of dowry and the emergence of it is the result of skillful measures in the context of the creation to adjust man-woman relationships. Naturally, woman noticed her dignity is in that not to sell herself freely; this matter has forced man offered her gifts to placate woman and respect her. Dowry gives woman character. Psychological value of dowry is more valuable than its material value (Motahari, 2013: 185). In Islam, dowry is based on several factors:

1. Dowry is on the basis of character and independence of woman, not indicator of woman value;
2. The foundation of dowry is honor and respect for woman; because usually gift is given to someone who be loved.

In addition to what said above, dowry compensates part of woman inheritance (regarding inequality of inheritance between man and woman). Likewise, dowry is indicator of husband's commitment to afford woman's life. Sometimes, dowry is considered a barrier for marriage breaking and guarantees durability of man-woman relationship. In case of divorce, dowry is considered as a financial support for woman.

Is Dowry a Financial Bail?

Today, dowry is more considered an obligation; that is, man takes the responsibility of dowry at the time of marriage, but does not pay for it unless when there is dispute among man and woman (and woman asks him to pay dowry). In outset of Islam, the custom was that man was committed to pay dowry in cash and The Prophet Mohammad did not accept marriage without paying for it. So, we cannot say according to Islam, dowry is a bail (Motahari, 2013: 199).

What is the Origin of Paying Dowry?

Why and how does dowry established? If the goal is that each of the men and women achieve their natural human rights and meet fair and human relationships between themselves and woman is treated like a human, so what is the necessity of paying for dowry? Requirements of justice and equality among human rights, especially in the twentieth century is based on abolishing dowry and alimony; taking the financial responsibility of woman by herself, and participating in children support equally with man (Motahari, 2013: 181).

The History of Dowry

It is said in prehistoric period when the human lived in a wild manner and life had a tribe form, marry with relatives was not allowed for unknown reasons. The youth who wanted to marry have been forced to select their wife from other tribes. Hence, they had to go among other tribes to choose their wife. At that time, man did not know anything about his role in the creation of child, i.e., he did not know that intercourse with woman results in child creation; he knew his child as his wife, not as his child (Motahari, 2013: 182). Despite the similarity of his children, he could not understand the reason for this similarity. Inevitably, children considered themselves child of woman, not of man (Motahari, 2013: 182). Man was considered barren, and after marriage, lived with woman as a friendship and as someone who woman needed his physical strength. This era was called "matriarchy".

Soon, man was aware of his role in the creation of child and recognized himself as the owner of children. Then, made woman his subordinate and took the responsibility of head of family. The So-called period of "patriarchy" began (Motahari, 2013: 182). In this period, marriage with relative was also not permitted, and man had to select a wife from other tribes. On the other hand, there was always war between tribes; so, girl was kidnapped. Gradually, war replaced by peace and tribes could have peaceful coexistence; such that kidnapping girl was abolished. So, to marry the girl, man went to girl's father and worked for him for a while (Motahari, 2013: 183).

Gradually, man learned that instead of working for girl's father, offered him competent gift; this was the emergence of "dowry". Summarily, at early stage, man was servant of woman; during this period, women have

ruled over men. At next stage, the government fell into the hands of men; men kidnapped women from other tribes. At the third stage, to marry a girl, man worked with his father for years. At fourth stage, man dedicated a "gift" to girl's father; and tradition of "dowry" started in this stage (Motahari, 2013: 183).

It is said when man removed matriarchy and established patriarchy, put woman his slave and at least, as hireling and mercenaries; considered her as an economic tool; did not give her social and economic independence; the results of woman's efforts belonged to someone else (that is, the husband or his husband). (Motahari, 2013: 183); woman had no right to select her husband or to have her own economic and financial activity. In fact, the money that man dedicated as dowry and the expense which he paid as alimony was in response to woman's economic interest for him during marital life (Motahari, 2013: 183).

Dowry in Islamic Legal System

There is also another stage which sociologists have no idea about it. At this stage, at marriage, man dedicates a "gift" to woman and woman's parents have no right to receive it. While woman receives the gift, maintains her social and economic independence; that is, she selects her husband by herself, not her father or brother; when she is in her father's house or while she marries, no one is allowed to appoint her to the service; the result of her work belongs to herself, not others; in her legal transactions, she does not need man's mandate. This stage is the same one that Islam accepted it and founded marriage upon it. There are many verses in Qur'an about that woman's dowry belongs to herself. God emphasizes that woman's dowry belongs to herself (not her father or brother); in other words, dowry is a gift from God for her. (Motahari, 2013: 184).

Psychological Effects of Dowry

Dowry is a means to enhance woman's dignity, encourage sanguineness in family, and provide thought comfort; in fact, it is a means to ensure woman about honesty and trustfulness of man. Giving such a gift, man implies woman that: I love you, respect for you, and appreciate your lovely; live calmly and make warm family. Woman needs intellectual secure and emotional and moral security (Hedayat nia ganji, 2007: 142).

The Establishment of Dowry

Civil law of our country has pointed out Imamia jurisprudence's provisions of dowry in Articles 1078 to 1101. One of dowry provisions is establishment of dowry. At marriage, dowry is considered woman's property entirely with one of the following four components:

- 1) Intercourse; 2) Innate apostasy of husband; 3) husband death; 4) woman death

Kinds of Dowry

In jurisprudence and civil law, dowry is of four kinds; each one has special provisions described in the summary:

1. Mahr-Almosama: it is dowry which its value is specified on marriage by the second person. The property specified may be profit or work or object.
2. Mahr-Almasal: it is dowry in permanent marriage without mentioning dowry which is given woman after intercourse, prior consent to dowry value, according woman's terms and conditions.
3. Marhr-Almut ah: it is dowry in permanent marriage without mentioning dowry which is given the divorced wife by husband who has not intercourse with her.
4. Mahr-Alsunnah: it is 500 dirhams equivalent to 262/5 ounces pure silver. The Holy Prophet determined this value for Habiba and other his wives' dowry (Sharafuddin, 2013: 124,145,164) (Khomeini, 1983: 97).

Delegation of Baz'

In permanent marriage, when dowry is not mentioned or lack of mentioning it is conditioned, the marriage will be valid, and the lack of mentioning dowry does not impair the validity of the marriage contract. In Islamic jurisprudence, this practice is called "Delegation of Baz'". After marriage, the couple can determine dowry with their consent, and if before consent to dowry, the intercourse is performed, woman will be entitled to receive Mahr-Almasal (Sharafuddin, 2002: 130).

Delegation of Dowry (Tahfiz Almahr)

In marriage, if delegation of determining dowry is entrusted to one person or the third party, such a marriage is called "Tahfiz Almahr" and the woman marries in this manner is called "Mafaza-Almahr" (Sharafuddin, 2002: 130).

Dowry in Marriage on Doubt

If it is thought there is marriage parity between man and woman, while really there is not exist such a relationship, it is said on doubt. However, the couple who performed intercourse while woman was in ignorance, in this case, woman entitled to receive Mahr-Almasal (Sharafuddin, 2002: 133).

Dowry and Its Quantity in Hadiths

Many hadiths have been expressed in the quantity of dowry from which the general rule derived is determining the quantity and type of dowry according to will and consent of the parties or common law in the society. Although there have been some certain discussions, but due to the above rule, mentioned cases have

been considered merely as examples of adjusting rule with concrete instances. What looks very interesting is taking easy (in determining dowry), determining little dowry, not attention to conventional glamor, and discouraging public from demanding much dowries, which represents an overall view of Islam in this regard (Fahimi, 2007: 133).

What Can Be Considered as Dowry?

In terms of Article 1078 of the Civil Code, anything that can be owned, can be considered as dowry. So determining dowry is agreement between the couple. What is defined as dowry should have custom-based value. Therefore, what is considered benefit can be used as a dowry (Khomeini, 1983: 97).

The Quantity of Dowry

Dowry has not certain quantity, but it can have any value under the consent of man and woman, little or much. However, it should not be as low as that cannot be considered as property. On the other hand, it is recommended not to be more than Marh-Alsunna (500 dirhams) (Khomeini, 1983: 98).

Little Dowry Is Recommended

Although it has been permitted that dowry is determined by the consent of man and woman, much or little, it is recommended that dowry be little to avoid some problems. Now we cite one hadith here. The Prophet Mohammad says: The best women are those who are more beautiful, while their dowry is little.

Ambiguity and Certainty of Dowry

Dowry should not be vague; otherwise, it will be void, but the marriage remains in force, and if intercourse is performed, women will be entitled to receive Mahr-Almasal. However, it is necessary that certainty of dowry be as high as possible; what is observed is sufficient, although it is unknown in terms of weight, size, and number (Khomeini, 1983: 98).

Much Dowry is Condemnation by Islam (Much Dowry is Unblest)

Qur'an and Imams have not premised much dowry; however, spatial and temporal conditions should also be taken into account. Totally, much dowry is not possible except for the capitalists; otherwise it delays marriage or causes non-marriage and sometimes leads to moral crimes (Mahmudi, 2000: 141).

Low Dowry is Hateful

As Islam Condemned much dowry, it considers little dowry hateful. In this regard, Imam Ali says: it is not acceptable for me that dowry be less than ten dirhams (Mahmudi, 2000: 143).

Why Is It the Responsibility of Husband to Pay Dowry?

Dowry is considered primary wife's alimony which the husband is obliged to pay for it. Since Almighty God has known woman's dowry as his gift to woman and mentioned it under the title of "Sidaq", man is required to pay it honestly. Paying dowry to women is important enough that if a man cannot afford it (if he is poor), he should teach woman as her dowry (Mahmudi, 2000: 135).

Economic Performance of Dowry

A) Supplement to woman's inheritance: According to Islamic law, women's inheritance in some cases is less than men's one. For example, boy's inheritance of the parents is twice girl's own. According to some claims, dowry can compensate for women's share of inheritance (Hedayatnia ganji, 2000: 135).

B) Bail in exchange of divorce right for man: under Islamic law, divorce is exclusively of men's right and women are deprived of this right except in special cases. Hence, man may abuse divorce right; therefore, one of the economic functions of dowry is that it can be a financial bail against man salacity, divorcing, and remarrying another woman. In a commentary, it is written: in addition to a means of compensating and providing her later life, dowry often acts as a brake on the man's appeal to divorce. Although under Islamic law, after marriage man is responsible for paying dowry and woman can immediately demands it, because it usually remains in the form of debt obligation, it is considered both as saving for the future and as protection to control divorce.

However, dowry as "bail" cannot be considered as philosophy of dowry; because if it was the case, much dowry had to be recommended, while Islam has always recommended taking easy in determining dowry. Apparently, authors' purpose is not that dowry as "bail" is the philosophy of it; but they mean unlike Islam's advice, custom tends to increase the value of dowry. However, the present situation is not desirable, but it is a social fact (Hedayatnia ganji, 2007: 137, 138).

C) Social insurance and providing woman's future: another dowry economic function is that it can reduce the risks and problems caused by marital issues. That is, if man divorces his wife, the woman can afford part of her financial needs using dowry (Hedayatnia ganji, 2007: 138).

D) Woman activities: None of women activities in marital life have material gain; vice versa, all men activities have material benefit for him. It is obvious that if woman does not service man, man is not able to act his activities with confidence. The necessity to pay dowry is to reward woman's activities in the family (Hedayatnia ganji, 2007: 139, 140). Accordingly, dowry is woman's reward for her service in marital life.

However, the above mentioned cases cannot be regarded as philosophy of dowry. In Islamic legal system, less attention has been given to economic effects of dowry and the main reason has not accounted; there are

several evidences in this regard among which the following ones can be noted. In various hadiths, taking easy about dowry is recommended. It also suggested that woman forgives her dowry after marriage. In addition, according to Islam, it is not necessary that dowry has financial aspect; dowry can be teaching one surah of Qur'an. So, considering economic functions of dowry as its philosophy is critical. However, the custom uses the religious establishment to achieve its objectives, and its customary function cannot be denied (Hedayatnia ganji, 2007: 139).

Conclusion

Man is responsible for affording marital life expenses. The woman sells all her life to man and man is her customer and there is no purchase without price. Women have been prohibited from trade; instead, God has commanded man to grant gift to women; in order for no one think that marriage is trade and dowry is woman's value.

Woman's dowry is not her value, but a sign of man's honesty towards his wife and a support for woman and a factor to family bond. Even though much dowry is useful to prevent divorce, it is not the main choice, because if man is not willing to live his wife, put her in bottleneck, such that she is forced to forgive her dowry. So, the best way to avoid divorce, is pieties of couple, not much dowry.

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Specialty Journal of Politics and Law, 2017, Vol, 2 (1): 115-126

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