

LEGAL INVESTIGATION OF WIFE REFERENCES FROM DOWRY FORGIVENESS IN LAW OF IRAN

Masoumeh HASAN ABASI

Department of Criminal Law and Criminology, Islamic Azad University, Branch of Chaloos, Iran.

ABSTRACT

Forgiveness is a common contract and its basic factor is that owner can remove the decision of forgiveness every time, but there are some exceptions in this law. Some exceptions in this subject were indicated in cases 807-803 of civic law in Iran. For example, if the owner who forgive an asset was died, the reference is impossible. Although is forgiveness is related to father, mother, children or nephews, the reference is impossible. The most important point in this case is that wife is not included of the case. There are various methods for reference of forgiveness that examples of them are that forgiver can remove his/her ownership from forgiveness asset or he/she can change the asset. The other method is change the forgiveness in a way that the owner pays other asset equal to forgive asset, although it is not necessarily equality of forgive asset and its instead.

Keywords: *Wife, Dowry, Dowry Forgiveness.*

INTRODUCTION

Dowry is a juridical recommendation in which the husband give wife an asset for confirm his love. The structure and framework of dowry is one of the man characters of legal system in Islam and this structure separated Islam from other religions. Dowry has an important position in family system and it revived less attention in views other than law. The holy Imam and religious scientists always pay attention to it and the recommended to prevent heavy amounts for dowry, but during various times this view was changed and its amount was increased and now it is an important social problem (Yousefzadeh, 2004:50).

Forgiveness of give gift has a specific position in Iran culture in a way that giving gift shows the rate of likeness toward gift receiver. Forgiveness is most important index of asset forgiveness which has two common and specific meanings. Forgiveness in general meaning means free ownership that is including forgiveness such as gift, conversation and so on (Malik, 2005:367). Also forgiveness means free ownership without misusing (Tabatabaee, 2005:2). The holy Quran, used (Nahleh) instead of dowry and based on this term, some scientists defined dowry as a gift from husband toward wife. The legislator in case 6 of related law, had husband to pay dowry in specific conditions. So what is dowry and forgiveness? Are they similar? There are disagreements between juries and legislators about dowry, but regarding to this that dowry is a gift from husband to wife, it seems that dowry can cover forgiveness completely but in other cases it must be cautioned. So the present research is seeking to investigate this question that can wife had reference if she forgives her dowry or not?

THEORETICAL BASES

Commitment

Commitment means acceptance doing a work or pay a fee with or without return (Shahidi, 2000:42). In other words, commitment means every legal deed that leads to do a deed or remove a deed against another person. The legal concept of commitment is a common term that is derived from various means. Religion based on jurisprudence has not specific financial base and commitment in this position means doing accepted deed.

Dowry

The holy Quran defined dowry as gift and necessitate husband to pay it. this recommendation show that giving dowry in marriage contract is not a private or created recommendation in Islam, but it is a recommendation which holy Quran confirmed it and indeed it is a social recommendation which was empowered by Quran confirmation. It is because some Ayahs of Holy Quran which show that the dowry was common in various marriage customs (Tabatabaee, 1990:269). So by meaning of Holy Quran it can be understand that the Quran means is not that give wife dowry, but it means that give wife his dowry and this indicated that dowry is a necessary factor. Also historically it is clear that dowry payment was a constant social custom, although it had some changes and it was present in societies from old time. In ancient Egypt, husband gave money to wife father since his capture a family member and indeed dowry payment was for decreasing suffering from separating a family member (Ghaleb, 1997:47). In Babul, dowry was wife cost that wife father received it and after that this custom was a symbolic factor and dowry was a gift. (Ghaleb,1997:60). Hijaz people also applied this custom and husband give money to wife father as a gift, after Islam, this custom was changed a dowry was devoted to wife herself.

Dowry in civic law

Cases 1078 to 1101 of civic law are related to dowry as following:

- case 1078: everything that has ownership can be considered as dowry
- case 1079: dowry must be determined mutual and without ambiguity
- case 1080: determining dowry rate is related to agreement of both parties
- case 1081: if it is determined that by disability of pay dowry by husband, the marriage contract is invalid, the contract is valid but the condition is not.

Case 1082; after contract, the wife is owner of dowry and she can change it

Case 1083: the husband can pay dowry monthly

Case 1084: if the dowry is incomplete or it damaged, the husband is responsible for it

Case 1085: wife can refuse for doing her tasks until payment dowry

- case 1086: if before receiving dowry, wife did her tasks, she cannot cut them, but dowry is valid and she can demand it.

Case 1087: if during marriage contract, the is no dowry, the contract is correct and parties can determine dowry after contract

- case 1088: if one of the parties is died before doing sex, or before determine dowry, wife has not any right for dowry
- case 1089: if the husband and third party demanded to determine dowry, they can determine it for every rate and amount.



- case 1090: if the wife demanded to determine dowry, she cannot determine it more than standard rate
- case 1091: for determine standard, some conditions such as family wealth of wife, her costs and so on must be considered.
- case 1092: if the husband divorce wife before doing sex, the half of dowry amount must be paid
- case 1093: if it was not determining the rate of dowry, in divorce, wife receives standard rates for before and after sexes
- Case 1094: for determine the standard, the husband wealth is considered.
- Case 1095: in some contracts such as temporary ones, absence of dowry rate make contract invalid
- case 1096: during temporary marriage, wife dying or refusing sex does not lead to dowry invalidation
- Case 1097: during temporary marriage, if husband forgive the time of contract before doing sex, he must pay the half of dowry
- Case 1098: during invalidity of contract before doing sex, wife has no right for dowry
- Case 1099: if the wife is not aware from invalidity of contract and she do sex with her husband, she can demand dowry
- case 1100: if the dowry be asset of other one than husband, the wife can demand standard rate of dowry

Case 1101: during invalidity of contract before doing sex, the wife has no right for dowry, although there are some exceptions in this case

Dowry identity

To determine dowry identity in view of juries, we must investigate the identity of marriage contract in their view. Here the question is that is the marriage contract is changeable and can dowry be a cost for an exchange? By investigating juridical texts, it is concluded that using some economic terms and relation of marriage contract with dowry leads to some views about dowry in a way that some juries indicated prison right for dowry (Toosi, 1986, 547). Although some of the juries are disagreement with it (Najafi, 1981:42).

In addition, it may some Ayahs of Holy Quran leads to guess changeable factors of dowry, while in addition to indicated cases about marriage contracts; it is separated from other contracts. (Moemen, 2010:66). Absence many factors of exchange rules in married contract empowered this hypothesis that this contract is no exchangeable and some reasons of it are correctness of marriage contract without determine dowry, no necessity of adoption of dowry with social and economic condition of parties and so on. These reasons lead to this that Juries define marriage contract as and semi exchangeable contract (Najafi, 1981:42). Based on this, it cannot be said that marriage contract is under complete conditions of other defined contracts and increasing the rate of dowry must be in agreement of both parties. (Jaafari Langroodi, 2002:601).

Law scientists following with juries investigated identity of this contract and some of them indicated that this contract is exchangeable because of determine exact rate of dowry, although they rejected complete adoption of marriage contract as an exchangeable contract (Imami, 1996; Katozian, 2003).



DOWRY FORGIVENESS

Forgiveness means gift a thing to other person without return it (Amid, 1993, 1082). Legal term of forgiveness means a contract in which a person return an asset to its first owner (Mosavi Khomeini, 1999:2).

Conceptual and term dictionary definitions of forgiveness are similar (Shahid Sani, 1994:3). Forgiveness is a contract and so it must be accept and interpret.

Forgiveness in civic law

Based on case 795 of civic law, forgiveness is a contract that based on it a person gift an asset to other person, in other words, he give the ownership of his asset to other freely.

In this contract there are three parties:

Forgiver: who forgive his/her asset?

Forgive receiver: who receive asset

forgiven asset: the asset which was devoted to other person

Forgiveness identity

Legislator devoted cases 795-807 of civic law to forgiveness and its conditions and because of specific conditions of it, forgiveness is a determined contract in our law.

Case 795, defined forgiveness as a contract in which a person devote an asset to other person. In continue the characters of this contract are investigated and all its parties are introduced.

The first subject that was defined in case 795 is its conditions for be contract and the second one is its cost that is cost free (case 795 indicated that: forgiveness is a contract in which a person devoted his/ her asset to other person freely). Cost free is one of the necessary conditions for forgiveness that was discussed here: in civic law, free contract was not defined and law scientists believed that free contract is a contract that is transferred to other one deliberately without return it or receive anything for it. One of the law scientists indicated that the cost free of forgiveness means that it is not including exchange (Katozian, 1988:33). But it must be noted that the cost free character of forgiveness is not enough condition for its definition, because in case 801 it was referred directly that forgiveness can be changeable and it means that forgive receiver committed that do a work or deed. In this case forgiveness is cost free but it is exchangeable. It must be noted there are differenced ideas in this way (Shahi sani, 1994; Najafi, 1981). Although some juries indicated that forgiveness in every condition is cost free (Tabatabaee, 1956:2).

Relationship between dowry and forgiveness

- *Dowry and its relationship with forgiveness*

Dowry is not created recommendation of Islam but Holy God confirmed it and regarding to this, it is an asset which is related to wife after marriage. The dowry in Iran is based on custom and religion and it has no similar factor in western cultures. (Safae and Imami, 1998). After this explanation, now it must be investigated that is dowry is a gift from husband to wife? Is there any similarity between dowry and forgiveness contract? As it was defined in case 795, forgiveness is a contract that gives ownership to other person freely. In continue civic law in cases 796 to 807 indicated characters of the forgiveness. Now this must be discussed in marriage contract. The first reason of relationship between dowry and forgiveness is the concept that is derived from holy Quran and it was indicated in Ayah 4 of Nesa sure in which it is indicated that: pay wife dowry as forgiveness (Motahari, 1988:164).



Based on, marriage contract is exchangeable and wife can refuse doing her task if not receive dowry (Najafi, 1981:31). In case 1085 also this was referred. Some scientists introduced marriage contract as a semi exchangeable contract and they indicated that marriage contract basically is none financial contract although some financial conditions are included in it. (Safae and Imami, 1998:166).

Those who introduce dowry as remuneration indicated that dowry is a payment to family of wife because of damages that they are tolerated for separating their daughter (Makarem Shirazi, 1974:265).

The famous juries believed that by making marriage contract, the wife is owner of all dowry (Khomeini, *ibid*, 2), but this ownership is constant and confirm by some conditions such as doing sex. One of famous juries, Skafi, believed that wife during marriage contract is owner of half of dowry and with doing sex; she is owner of all dowry. (Najafi, 1981:26). Dowry is related to wife herself and her parents have not any right about it and after paying dowry, other payments are not necessary (Toosi, 1968:2). All juries except Toosi believed that father cannot involved in dowry of his daughter. The civic law indicated clearly: after contract, the wife is owner of dowry and can make decision about it (case 1083). If the husband pay the dowry as his asset and then sell it, the wife can get the price of asset beside to her dowry in if the wife sell the asset that is not related to her, the husband can demand return it.

the factors for confirm of ownership of wife for dowry

Connubial relationship in civic law was not indicated clearly but it can be derived from case 1092 that it is true. Some juries believed that if husband or wife was died before doing sexual relationship, all amount of dowry is for wife (Jebbeli, 2:1993). And also Toosi believed that if the wife had a suicide before doing sexual relationship, the husband must pay her dowry completely, but majority of juries are disagree with it and they believed that in this condition the wife is owner of a half of dowry. Also all juries believed that apostasy of husband is lead to divorce and all dowry is related to wife. Some juries also believed that in this way wife is owner of half of dowry (Khomeini, *ibid*,2). Divorce before doing sex is following with payment of half of dowry and if he pays all amount of dowry before it, the wife must return a half of it (Helli, 1997, vo 2).

- *The time of dowry payment*

In recent centuries the dowry was a loan and guarantee, but in view of juries' dowry can be received every time (the civic law, case 1083). The dowry payment is necessary for husband (Helli, 1997: 2).

- *Removing of refuse right*

If the wife do sex satisfactorily before catch dowry, she cannot refuse it after that and some juries such as Toosi and Mofid believed that the refuse right of wife is removed after doing sex (Toosi, 1968: 1). It must be noted that the condition for this is satisfaction of wife for doing sex (Haeri, 2003).

Validity and invalidity of dowry

Imam Khomeini indicated that: the marriage contract is valid even without determining dowry and after doing sex, the dowry is based on law. Also Araki indicated that: determining dowry is not necessary during contract and without it, marriage contract is correct.

Receiving and no receiving dowry

During marriage contract without dowry, the wife has no any right before doing sex and if divorce, the wife can demand dowry based on financial power of husband and if the contract be



invalid for a reason except than divorce, the wife is not owner of dowry. Demanding for dowry is investigated in two ways: 1-in a way that dowry is determined 2- in a way that dowry is total and general. If the dowry is determined, the husband must pay it to wife and during selling dowry by husband, he must pay it to wife again.

CONDITIONS OF FORGIVENESS

In jury and legal sources, there are some conditions for forgiveness as following:

1. a person who forgive an asset must be conditioned and child or crazy person cannot forgive asset
2. forgiver must be owner of forgive asset and he/ she cannot forgive the asset of other person
3. forgiveness is used by devoted person when the conditions are confirmed and the asset of children and crazy people must be devoted by their parents (Najafi, 1981:130).

The conditions of correctness of forgiveness

1. receive: forgiveness is effective when forgiver allow it (case 798 of civic law). In other words, forgiveness is a determined contract that is not grouped with complete contract and need some derivations.
2. determine forgiveness: some juries believed that forgiveness is invalid totally but majority of them believed that it is correct and valid.

exchange condition in forgiveness

Forgiveness can be changeable and forgiver can had the condition for forgive his/ her asset (case 801 civic laws)

the factors of preventing dowry reference

1. if the forgiveness be from father to children
2. if the forgiveness be exchangeable and its exchange by paid
3. if the forgive asset be change
4. the forgiveness by a person other than owner
5. diyng one of parties
6. giving asset as charity
7. if owner forgive his/her debt to debtor (Tabatabaee, 1968:369).

The condition of reference right in forgiveness

Those factors about forgiveness are as following: forgiveness is a contract in which forgiver give other one an asset freely. So forgiver can reference this forgiveness and return his/ her asset (Najafi, 1981:130).

The results of reference from forgiveness

1. returning forgive asset: the asset is return to forgiver without any fault, and if there is a fault, forgiver cannot demand it, because he / she forgive it freely and so there is no any guarantee.
2. also the profits of asset during this time must be determined and there are some conditions for this profit (civic law, case 804).

how forgiveness reference can be occurring?

There is no specific law for forgiveness, so forgiver can return every time he/ she want. Case 449 of civic law has referred to this, so if the forgiver return to his/ her forgiveness, it is a kind of reference and aware the person who received asset for the reference (Najafi, 1981:130).



Legal conditions of forgiveness

When we forgive anything to other person, it may we have not any legal condition about it. Based on case 795 of civic law, forgiveness is a contract in which a person give an asset to other one freely. In other words, it is a kind of ownership transfer (Mohammadi, 13:2013).

Reference from dowry forgiveness

Sometimes females forgive all or a part of their dowry. There is a question in this way that can this forgiveness be reference? Answer to this question is dependent to dowry identity. Before investigating various views in this subject, we have a short review on determine dowry. In contemporary time, the dowry is determined as gold coin. Some dowries also are other asset such as house document and so on.

There are various views for investigating forgiveness of dowry:

1. if dowry is a loan, the forgiveness cannot be reference, but in some conditions it is possible.
2. in some dowries such as house document or automobile document, without any doubt, the forgiver can reference from it.

CONCLUSION

Forgiveness is a common contract and its basic factor is that owner can remove the decision of forgiveness every time, but there are some exceptions in this law. Some exceptions in this subject were indicated in cases 807-803 of civic law in Iran. For example, if the owner who forgive an asset was died, the reference is impossible. Although is forgiveness is related to father, mother, children or nephews, the reference is impossible. The most important point in this case is that wife is not included of the case. There are various methods for reference of forgiveness that examples of them are that forgiver can remove his/ her ownership from forgiveness asset or he/ she can change the asset. The other method is change the forgiveness in a way that the owner pay other asset equal to forgive asset, although it is not necessarily equality of forgive asset and its instead.

Dowry is a juridical recommendation in which the husband give wife an asset for confirm his love. The structure and framework of dowry is one of the man characters of legal system in Islam and this structure separated Islam from other religions.

Cases 1078 to 1101 of civic law are related to dowry as following:

- case 1078: everything that has ownership can be considered as dowry
- case 1079: dowry must be determined mutual and without ambiguity
- case 1080: determining dowry rate is related to agreement of both parties
- case 1081: if it is determined that by disability of pay dowry by husband, the marriage contract is invalid, the contract is valid but the condition is not.

Case 1082; after contract, the wife is owner of dowry and she can change it

Case 1083: the husband can pay dowry monthly

Case 1084: if the dowry is incomplete or it damaged, the husband is responsible for it

Case 1085: wife can refuse for doing her tasks until payment dowry

- case 1086: if before receiving dowry, wife did her tasks, she cannot cut them, but dowry is valid and she can demand it.



Case 1087: if during marriage contract, there is no dowry, the contract is correct and parties can determine dowry after contract

- case 1088: if one of the parties is died before doing sex, or before determine dowry, wife has not any right for dowry
- case 1089: if the husband and third party demanded to determine dowry, they can determine it for every rate and amount.
- case 1090: if the wife demanded to determine dowry, she cannot determine it more than standard rate
- case 1091: for determine standard, some conditions such as family wealth of wife, her costs and so on must be considered.
- case 1092: if the husband divorce wife before doing sex, the half of dowry amount must be paid
- case 1093: if it was not determining the rate of dowry, in divorce, wife receives standard rates for before and after sexes
- Case 1094: for determine the standard, the husband wealth is considered.
- Case 1095: in some contracts such as temporary ones, absence of dowry rate make contract invalid
- case 1096: during temporary marriage, wife dying or refusing sex does not lead to dowry invalidation
- Case 1097: during temporary marriage, if husband forgive the time of contract before doing sex, he must pay the half of dowry
- Case 1098: during invalidity of contract before doing sex, wife has no right for dowry
- Case 1099: if the wife is not aware from invalidity of contract and she do sex with her husband, she can demand dowry
- case 1100: if the dowry be asset of other one than husband, the wife can demand standard rate of dowry

Case 1101: during invalidity of contract before doing sex, the wife has no right for dowry, although there are some exceptions in this case

Forgiveness means gift a thing to other person without return it. Legal term of forgiveness means a contract in which a person return an asset to its first owner.

Conceptual and term dictionary definitions of forgiveness are similar (Shahid Sani, 1994:3). Forgiveness is a contract and so it must be accept and interpret. Dowry is not created recommendation of Islam but Holy God confirmed it and regarding to this, it is an asset which is related to wife after marriage. The dowry in Iran is based on custom and religion and it has no similar factor in western cultures. After this explanation, now it must be investigated that is dowry is a gift from husband to wife? Is there any similarity between dowry and forgiveness contract? As it was defined in case 795, forgiveness is a contract that gives ownership to other person freely. In continue civic law in cases 796 to 807 indicated characters of the forgiveness. Now this must be discussed in marriage contract. The first reason of relationship between dowry and forgiveness is the concept that is derived from holy Quran and it was indicated in Ayah 4 of Nesa sure in which it is indicated that: pay wife dowry as forgiveness.



References

- Amid, Hasan, (1993), the Persian dictionary of Amid, Tehran: published in Amirkabir
- Ghaleb, Ghanem (1997), the rules and law during history, Lebanon,
- Haeri, Seyed Ali, (2003), interpreting civil law, vol 2, published in Ganj Danesh, 2th edition
- Helli, Jamalodin, (1997), introduction on religion, Qom
- Imami, Seyed Hasan, (1999), civic law, publication of Islamieh, Tehran, 13th edition, 4th volume.
- Jebelli, Zeinodin, (1993), understanding recommendations, volume one, Tehran: publications of Islamic theologies
- Katozian, Naser, (1998), Islam recommendation, publication by Ganj Danesh, Tehran.
- Katozian, Naser, (2003), family rights, 1th volume, Tehran, publication by Enteshar publications.
- Langrroodi, Jaafar, (2002), rights terminology, the first vol, published in Ganj Danesh, 2th edition
- Makarem Shirazi, Naser et al, (1974), excellent interpretation, third vilume, Tehran, 43th edition
- Malik Ibn Anas, (1965), great recommendations, 2th edition, Beyroot, Lebanon.
- Moemen, Roghayehsadat, (2010), the position and circumstance of law of marriage in Imamieh jury, M.A thesis, University of Imam Sadegh (A)
- Mohammadi, Keramat, (2013), Legal tasks in dowry subject, Hedayat news paper
- Mosavi Khomeini, Rohollah, (1999), Tahrir ol Vasileh, published in Qom, Darelelm
- Motahari, Morteza, (1977), woman rights in Islam, Qom, publication by Sadra.
- Najafi, Mohammad Hasan, (1981), Javaherokalam, Lebanon, Beirut,
- Safae, Asadollah, Imami, Seyed Hasan, (1996), family rights, Tehrann University, 5th edition.
- Shahid sani, Zeinodin, (2009), the married factors in Islam religion.
- Shahidi, Mehdi, (2000), contracts and comittments, 2th volume, Tehran, publication opf Majd.
- Tabatabaee, Mohammad Hossein, (1991), holy Quran interpretation, translated by Mesbah Yazdi, Tehran, 5th edition.
- Toosi, Mohammad Hasan, (1968), interpreting law, published in Islamieh, Tehran
- Yousefzadeh, Hasan, (2005), social study of dowry, women magazine, no.27, pp. 51-74.

