



INVESTIGATING THE ROLE OF ALIMONY IN POST-DIVORCE COMMON PROPERTY DISPUTES

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ABSTRACT

According to the principle of individuals' financial independence, the property is exclusively in the possession of the individual and no one can seize it, which also applies to the marriage contract. Marriage is not a permanent affair and ends for various reasons, including the dissolution of marriage. One of the issues discussed here is that what is the injunction about the common property between couples after divorce? There is disagreement among the jurists, but what is gained after a descriptive and analytical analysis of the jurisprudence is that, In the absence of any reason, the property reserved for women is for the woman, and the property reserved for men is for the man, and the property which, according to custom, is part of the woman's dowry is for the woman, and the rest common property is for the man.

Keywords: *usurpation, property, alimony, common property, dissolution of marriage*

INTRODUCTION

According to Islam, except in some cases, there is equality between men and women, and none have the advantage over others. They also enjoy complete freedom and independence in financial affairs. According to Iranian law, when human reaches the age of legal development, he\she is able to manage his\her own property and hence, no one has the right to seize his\her property without his\her permission. Marriage also has no effect on the couple's financial relationship, and men and women are financially independent after marriage. Of course, marriage for a woman provides financial rights such as dowry that her husband has to pay.

One of the cases of dissolution of marriage is divorce. In the event of divorce, each spouse's ownership of his or her property continues as at the time of the marriage. Now, if there is a dispute between the couple and regarding the ownership of the property and each of them claims to own the property according to Shi'a jurisprudence and Iranian law, how should the dispute be resolved? In the case of real estate, it is easy to settle a dispute by enforcing property registration. It is unusual to have ownership of a purchase of commodity and other property, especially movable property; if the claimant makes a Bayyina, then the property is his\hers, but how should the dispute be resolved if there was no Bayyina?

1. Problem Statements

Although most jurists have argued in their books about a husband-and-wife dispute, but given the generality of the evidence, the issue's verdict can be extended to other property.

Jurists in this issue have different views. The reason for the disagreement is the difference between the traditions (Rashti Gilani Najafi, 1980, vol. 2, p. 299).

1.1. The first view, divide the property equally

Some jurists believe that property should be divided evenly after the oath; whether it be for men, such as armor and weapons, or for women, such as headscarves or women's clothing, or for both, such as carpets and rugs or lost or whether there is a conflict between the two or between the heirs or one of them with the heir (Shahid Sani, 1992, Vol. 14, p. 135), Sheykh Tusi in Mabsout (Sheykh Tusi, 2008, vol. 8, p. 310), Allame Helli (Helli, 1992, vol. 3, p. 470), and Fakhr Al-Mohagheghin (Helli, 2008, vol. 4. P.381) believe this.

The evidence of this view is the generality of the evidence (Shahid Sani, 1992, vol. 14, p. 135). The usurpation rule can be mentioned in this regard, which is one of the most well-known and valid rules that is widely cited in most jurisprudence and legal issues. (Mohaghegh Damad, 2004, Vol. 1, p. 25). The purpose of usurpation, is possession and conquest of property (Mostafavi, 2005, vol. 1, p. 318). In the definition of conquest, it is said that its domination is such that it is conquered whenever it wishes, though not possess it (Makarem Shirazi, 1991, vol. 1, p. 295).

The rule of usurpation law is that one's possession and conquest over the object is a proof of that person's ownership because man's dominion over the object is the sign of the property of the person and the property of the object, unless the contrary is proved (Mohaghegh Damad, 2004, Vol. 1, p. 33-34; See Sabzevari, 1992, vol. 27, p. 122) Ravayati (Horr Aameli, 1988, vol. 27, s. 293).

This comment has objective. There is no doubt that the principle of division of property is equally between men and women by the rule of usurpation, but despite the credible news that has been put into this issue, this principle must be appropriated (Shahid Sani, 1992, vol. 14, p. 135) and many great jurists have not accepted this view (Amali, Bi Ta, Vol. 10, p. 233).

1.2. The second view, belonging all property to the woman

The second view is that the woman's claim is absolutely true. According to a narrative, Al-Shaykh al-Sadouq chosen this quote (Tusi, 2011, vol. 3, p. 47). Documented by this view is the narrative of Abdul Rahman Ibn Hojjaj and Al-Sahiha Al-Ishaq Ibn Ammar (Sabzevari, Bi Ta, vol. 2, p. 737). Moreover, some believe that the fatwa of Imam Sadiq (AS) was given according to the current habits between the cities, and dowry may be is for the man somewhere rather than the woman (Rashti Gilani Najafi, 1980, vol. 2, p. 299).

The text of this narrative is that Imam Sadiq (AS) asked Abdul Rahman how he would judge Ibn Abi Leila. Abdul Rahman says, "He made four judgments on the same issue; Ibn Abi Leila ruled in four ways on the issue of the husband and wife of one of them dying, or the man, divorcing the wife and having a dispute over the furnishings." Imam asked him, "What are the four injunctions that Ibn Abi Leila made on this issue?" Abdul Rahman says, "But his first injunction is according to the fatwa of Ibn Naqi, a Sunni jurist." He dedicated the thing specially used by the woman to her and so as the man. He also divided the common property, which was neither belonged to the woman nor the man, half for the woman half for the man.



Abdul Rahman says, "I heard that Ibn Abi Leila stated in his second fatwa and in his second injunction, all the property and the commodity should be equally divided if they do not have presumptive."

Then, Ibn Abi Leila stated in the third fatwa, "Commodity belongs to men, men own the house, and women are guest in the owner's house. She must provide Bayyina, otherwise, all the property belongs to men."

He issued a fatwa and another injunction for the fourth time that Abdul Rahman says, "If I had not been a watcher myself, I would not have narrated this fatwa from Ibn Abi Leila." Then, Abdul Rahman says, "A woman died, her husband was alive. The woman also left some commodity. I told the story to Ibn Abi Leila and asked him about the injunction. He ordered us to list all the commodity in the house and inform what was in the house. When he looked at the list, said, "These things that are common to men and women, and I sentence that they belong to the woman and do not belong to the man, unless the scale that belongs to the man.

I said to Imam Sadiq (AS), "How do you judge in such a case?" Imam said, "Our injunction is the last sentence of Ibn Abi Leila." Abdul Rahman said, "Do you mean you give all the commodity to the woman?" Imam gave him an argument and said, "If the woman provides Bayyina that all the property in mine, how many witnesses do she need in Bayyina?" I told Imam two righteous witnesses are required. Imam said, "Now instead of two righteous witnesses, all people know this and see that on a clear day (openly and publicly) dowry is transferred from wife to father in law's house to husband's house. If you ask everyone they tell you this the woman who brought dowry from her father's house to her husband's house on a clear day. If the man says that the property is mine, he claims it. If a man claims that I have bought a carpet, for example, bought things for the house, he must provide Bayyina. Otherwise, all the commodities belong to the woman. The man has no right, unless he provides Bayyina." (Horr Aameli, 1988, vol. 26, p. 214).

The drawback to this narrative is that the narrative contradicts the more famous narratives that will come in the fourth perspective, and those narratives are preferred to this narrative. In this case, the famous narrative should be ignored and of course, it has been said that making peace is better.

1.3. The Third view; reference to conventions

Allameh Helli stated this quote (Helli, 1992, vol. 8, p. 409) and the owner of Jawahir al-kalam¹ (Najafi, Bi Ta, vol. 40, p. 469) and Aameli (Aameli, Bi Ta, vol. 10, p. 233) returned it to a second quote. (Golpayegani, 1992, vol. 2, p. 247) Allameh Helli quote (Helli, 1992, vol. 8, p. 409) say, "If there is convention and habit among couples that are clear, we judge according to the convention and habit. For example, in the narrative of Abdul Rahman ibn Hojjaj that was based on the narrative, Imam said, "All the people know that dowry is transferred from wife to father in law's house to husband's house. This means that these are conventions and habits. These commodities belong to the woman, which are came to the house along with the entry of the woman from her father's house."

In rejecting this view, it is said that in the issue of correct and authentic narratives (which means the narratives of the fourth view, which will be referred to in the fourth view), can we

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abandon the narratives and take up the issue of rational custom? The answer is that despite the traditions, we cannot address the issue of rational custom and habit. Hence, the third view cannot be correct. (See Lesson of Fazel Lankrani's Jurisprudence, Session 119)

1.4. The Fourth view: belonging men's property to men and belonging women's property to women and dividing all the common property between couples

The fourth view is that what is specific to women to be owned by women and what is specific to men to be owned by men and what are common belong to both of them after the oath. (Shahid Sani, 1992, vol. 14, p.136)

Sjaeykh Tusi in Al-Khelaf (Tusi, 1986, vol. 6, p. 352) and Ibn Idris (Ibn Idris, 1989, vol. 2, p. 194), Mahaghegh Helli (Helli, 1987, vol. 4, p. 110), and most jurists believe that this is an indication of the fatwa's fame in this view (Shahid Sani, 1992, vol. 14, p. 136) and the narratives in this view are more famous than the previous ones (Helli, 1987, vol. 4, p. 111).

One of the reasons for this is Al-Qol Al-Sahihah Al-Refaa. It is narrated, "When a man divorces his wife and there are property in the woman's house, what is specific to the woman is for the woman and what is specific to the man is for the man, which should be divided between them. Also, if the man divorces his wife and the woman claims all the property is for me and the man also claims that all the property is for me, what is specific to the man is for the man and what is specific to the woman is for the woman, but what is common between men and women is shared between them."

This narrative is quoted in Al-Tahzib (Tusi, 1986, vol. 6, p. 294), but the document is not correct, however, the narrative documented in Al-Estebzar (Tusi, 2011, vol. 3, p. 47) is correct (Tabatabai, 1997, vol. 15, P. 190) and it is also stated in the books of ManLa Yahzarah Al-Faghih (Sheykh Sadough, 1992, vol. 3, p. 111) and Vasael Al-Shia (Horr Aameli, 1988, vol. 26, p. 216) that this narrative is true.

Another reason is Al-Sama'a narrative. Al-Sama'a says, " قال: السيف، عن رجل يموت ما له من متاع البيت، قال: السيف، " (Tusi, 2011, vol. 3, p. 46). Author of Jawahir Al-Kalam Fi Sharh Shara'i Al-Islam believes that the narrative is not explicit, but that it has been accepted by everyone (Najafi, Bi Ta, vol. 40, p. 495). Some others believe the story to be true, but regarding Hassan Ibn Meskini, it should be wondered (Moghaddas Ardabili, 1983, vol. 12. P. 253).

Another reason is the Al-Mavasaghah Al-Younes narrative. Younes Ibn Yaghoub says, "It was asked about a woman dies before a man or a man dies before a woman." Imam said, "What is specific to the woman is for the woman and what is common for men and women should be divided between them. What they possess are theirs. This narrative is authentic (Tabatabai, 1997, vil. 15, p. 190). Spreading the narrative injunction from death to divorce does not hurt because it is a composite consensus, which can be completed to each other (Naraghi, 1994, vol. 17, p. 367).

Although this narrative is about the difference between a couple's inheritance over their inheritance share proportional to the property in the house, but the following content is a general one and can be generalized to other matters with unity of criterion (Mohaghegh Damad, 2004, Vol. 1, p. 32). The possibility that emerges from the last part of the narrative, " و

"من استولى على شيء منه" is that the pronoun refers to the common property, but at the same time, the purpose of possess is a specific possess. For example, there is a thing in the house, but the



man keeps it in his own box, so, it is his and it is not common even though they both used it, but it is for someone who keeps it in his private place because he has a specific possess on the thing, do, it is for his (Golpayegani, 1992, vol. 2, p. 249; Fazel Lankrani, 1999, p. 291; Khomeini, Bi Ta, vol. 2, p. 432).

The fourth quote in the civil law also states, "Whenever one of the couples lives in their house, what is specific to the woman by habit is for the woman and what is specific to the man by habit is for the man. The husband's real estate and other common property are for both of the, unless the contrary is proved." The provisions of this injunction are repeated in Article 63 of the Civil Procedure Code of 1977.

The Supreme Court has also accepted the provisions of Article 79 as a general rule in the injunction no. 236-17/2/25 in Branch 6. They say, "Basically what belongs to each of man or woman from the house property based on convention and habit should belong to them."

1.5. Review of the fourth quote

In Iranian jurisprudence and law, rights and obligations have been set for couples with executive guarantee. It should be noted, of course, that in husband and wife relationships, financial rights are often for women. Alimony, portion, matrimony donation, and fair equivalent remuneration can be mentioned in this regard, but what is relevant now is the issue of alimony.

Alimony is what a woman normally needs in order to make a living. Accordingly, matters which include obligatory alimony and the husband is legally obliged to provide for his wife include food, clothing, housing, furniture, maids if she accustomed to it, and other necessities such as the supply of cold and heat, drugs that are typically less needed during the month and year, and so on (Khomeini, Bi Ta, vol. 2, p. 315).

The book of Jawahir al-kalam says about alimony cases, "What woman needs include food, clothing, housing, servants, and utensils that are commensurate with the status of women in that city" (Najafi, 1987, Vol. 31, p. 330). Some jurists have added other instances, such as "cleaning supplies, including combs, creams, soaps, and bath fee if needed" (Shahid Sani, 1989, Vol. 5, p. 469). It is come Tahrir Al-Kalam, a short statement without mentioning the instance, "What a woman needs and is in the dignity of such a woman in that city" (Helli, Bi Ta, vol. 2, p. 47).

Civil law does not provide a definition of alimony, nut it has stated the examples of alimony only in Article 1107 of Civil Law, "Alimony is housing, clothing, food, and furniture, which are commensurate with the status of the woman and the servant if the woman accustoms or needs due to illness or deficiency of organs." Nevertheless, there are some definitions in law doctrine. Some believe, "Something that is needed to make a living" (Safai and Imami, 1995, p. 393). Others put it more broadly, "Alimony is all the means a woman needs, given her degree of civilization and living environment and her physical and mental condition" (Katouzian, 1999, p. 187). This definition seems to be more accurate if the word "conventionally" or "recognizes its convention" is added to the latter definition. As with the case of a woman in need of an abnormal cost due to her physical condition, as some jurists have claimed, it can no longer be regarded as alimony (Khomeini, Bi Ta, Vol. 2, p. 316).

But the other question is whether the woman owns what the man gives her as alimony, or does she only get permission for profiteering and she can only use it?



The answer is that if the husband pays alimony to his wife, she has the right to seize and use it to sell, charity, or save it as she owns. She will not be liable for the loss of alimony to her husband even in extremes. But if the man refuses to grant the alimony to his wife, he is not entitled to use it and is deprived of his property (Sadr, 1999, vol. 6, p. 281).

If the charity is in the form of rent-to-own, the wife can own property in any way she wishes, for example if she wants to sell her clothes, rent or donate, etc., but if alimony is only for exploitation, selling, renting, and so on are not allowed unless the owner, the husband, allows her and the wife has the right to exploit and she has the right to exploit to the necessary extent (Najafi, Bi Ta, vol. 31, p. 349). So, whether it is in the form of rent-to-own or exploitation depends on the husband's intention in alimony, and of course, in the event of a dispute, the husband's statements should precede.

Some have overlooked or neglected the role of the alimony issue on ownership and argue, "Dispute among couples in property ownership occurs when neither couple has a reason to own the property and all of the property is owned and "usurpation" by both of them. The injunction to the common property where there is no convention and habit is referring to convention at first and then, if the woman uses the property in a non-customary way. This statement has some disadvantages, including the obligatory alimony according to the law and Sharia on men whether he is poor or rich. Alimony is the provision of things and furniture for living. Many home appliances are broken and damped like dishes, which over time are very likely to be destroyed. Many dowry equipment goes out of fashion after many years of use and families replace them with new one. Most importantly today, with the advancement of science and technology, home furnishings are not restricted in many ways, and in today's world, home furnishings abound in common life. So how should couples who have lived together for years and have no reason to own a property, be judged to have shared property? While men are responsible for alimony and certainly a lot of things may be lost and damaged or they may be replaced with a better thing, especially nowadays that new things with different brands and models are constantly being marketed. On the other hand, contrary to popular perception and tradition, a girl and her family are not required to provide dowry or allocate it at the husband's home in the community. The quantity and quality of dowry varies according to their cultural, family, regional and economic considerations as a customary agreement between families and boys and girls. Although convention can be regarded as one of the foundations and sources of law, this convention procedure is different in terms of quantity, quality, and form of dowry in different families and in many areas, which cannot necessarily be seen as a continuous convention binding (Zamani Darmazari, 2013, p. 270).

The narratives of the fourth view and the article of the civil law, which implies the view on sharing the common property between couples, it should be said that this is true when there is no presumptive, but there is no chance for division of common property between men and women with presumptive such as alimony and status assessment. Here the judge must rule on the basis of presumptive, i.e., the situation in which the judge considers reason to be known (Jafari Langroodi, 2008, p. 78). The validity of presumptive is based on certainty, which comes from the situation abroad for the magistrate to hear in the lawsuit. Therefore, if the presumptive as a right to a claim at the time of the hearing, the judge will rule accordingly because it gives the judge the knowledge of the right existence. If the presumptive does not provide certainty for the judge, speculation or suspicion will not have any religious authority



and in the case of conflict between the presumptive and legal evidence like usurpation, presumptive shall be prior (Emami, 1991, Vol. 6, pp. 223 and 224). So a judge must judge on the basis of circumstance. According to convention and Sharia, the husband who is in charge of providing home furniture is the owner of property, unless there is a presumptive and reason.

Therefore, the presumptive such as the necessity of alimony can be considered, which can confirm the principle of common property between couples, if it not implemented, the injunction would be the ownership of common property by men. So, this s view has no conflict with Iranian law.

Finally, according to the current convention, more contemplation is needed for the division of common property between couples. What, according to convention and appearance is part of the woman's dowry belongs to the women. The rest of the common property must be the property of the man, and the division of the common property is not correct because alimony is obligatory on man. One of the samples of alimony is providing home furniture. These cases are more evident especially during a long life. The answer to this question, whether common property between men and women is the same as that which had been for many years after the beginning of life, will be easier. Certainly the common property between many couples will be added and many will be depreciated and destroyed.

CONCLUSION

The principle of common life or marital relationship is maintaining the financial independence of couples, but in the event of divorce and dispute between the couple on property, it should be judged based on Bayyina referent. In the absence of Bayyina, what is specific to the man is for the man and what is specific to the woman is for the woman. Common property is for woman if they are part of dowry on the basis of existing customs and appearances, otherwise, the injunction would be the ownership of man based on presumptive and the obligatory of alimony.

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