Jurisprudence and Legal Study of Unconscionable Dowry Edicts

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Abstract

Unconscionable dowry is one of the important matters of Islamic laws and also is one of the important issues in today's society. Dowry is the privilege given to women by Islamic law, and this can be proven with regard to the verses of the Quran, hadiths and the words of the Islamic jurists. One of the subjects of dowry is the sum of dowry. In today's society the skyrocketing dowries are very troublesome and disturbing. The study entitled "Evaluation of the jurisprudence reasons of unconscionable dowry and its psychological consequences on relationship between couples." According to the importance of the study's subject, that dowry has some motivations for couples, that spouses are usually reluctant to determine unconscionable dowries. On a contrary, wives for sustaining common life and having peace of mind about the economic dimensions of life, demand unconscionable dowries. The results include: the Shari'a (Quran, hadith and the words of Jurists) are not considered a limitation for dowry, light dowry has been emphasized and unconscionable dowry has been criticized. Determining dowry depends on the both parties satisfaction, whatever the amount of dowry is, the man have to pay it legally. Unconscionable dowry usually have a negative impact on family's Financial and nonfinancial affairs, it reduces youth interest to marriage which associated with many problems in society. To solve this problem, the jurisprudence and legal study of "determining the amount of dowry" is essential. In order to do this, it's better to determine the legal and ethical principles for the amount of dowry, by which have a step ahead in solving this problem.

Introduction

Family as a unique social entity from past to present, has an eminent position in the society. "Dowry and alimony," are the wife's financial rights.

Dowry is the privilege given to women by Islamic law, and this can be proven with regard to the verses of the Quran, hadiths and the words of the Islamic jurists. One of the subjects of dowry is the sum of dowry. In today's society the skyrocketing dowries are very troublesome and disturbing. There is no limitation assigned for dowry from Shari'a, Quran, hadith and the words of Jurists.

Article 1080 of civil law says: "The dowry is determined to be consensual. Whatever the amount is, the man should pay it."

Dowry usually have a negative impact on family's Financial and nonfinancial affairs, it reduces youth interest to marriage which associated with many problems in society. To solve this problem, the jurisprudence and legal study of "determining the amount of dowry" is essential. In order to do this, its better to determine the legal and ethical principles for the amount of dowry, by which have a step ahead in solving this problem.

God Almighty says in the Holy Quran:

« And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (Is due to them)»,

"Should single men and women, slave girls, and servants marry each other, and if they are poor, they will be needless by the grace of God. And God aware of humans and is mighty merciful."

There are many hadiths from infallible Imams (Pbut) about the importance of marriage.

Messenger (Muhammad pbuh) said: "Whoever marries has completed half of his religion. And the other half will be your duty to Allah."
In today's society, because of people’s unawareness, dowry deviates from it original way, and it is proved that, not only unconscionable dowries cannot bring and sustain happiness for couples, but also can cause serious problems in their lives.

One of the problems that now afflict the young people is their inability to pay unconscionable dowry that the girl's family demands. It is due to the lack of trust and confidence in boy from the girl’s family. They afraid lest he falls in love with somebody else in future and want to divorce his wife, and because of insignificant dowry, he could do this easily. Hence, today’s dowry is an immense financial usually in form of gold coins.

Messenger (Muhammad pbuh) said: “Do not determine unconscionable dowries, because the dowry is like God mercy’s rain.”

One of the financial affairs between couples is “alimony”. Alimony literally means spending, cost, what someone spends for his descendants and wife. The colloquial meaning of alimony is so close to its literally meaning, and includes: “What is necessary for living.”

According to Islam, paying the cost of family and wife’s personal expenses is the man’s responsibility. And the necessary conditions for the alimony are two:
1. Marriage should be permanent
2. Wife’s obedience

Statement of Problem:
Unconscionable dowry has jurisprudence, legal and social aspects. According to my field of study (Jurisprudence and Principles of Islamic Law), I examine this issue from legal and jurisprudence aspects.

The thesis, first tries to define dowry literally and colloquially, and then tries to examine the different kinds of dowry such as: On demand dowry and On afford dowry. And in the main part of the thesis, unconscionable dowry jurisprudence reasoning (verses, hadiths, and customs) has been discussed. And in the later parts, psychological consequences, amount and conditions and the nature of unconscionable dowry, and then the psychological consequences of unconscionable dowry from psychologists attitude, will be discussed, to achieve an overall result.

The importance and necessity of the research:
Because of the unconscionable dowry is an important issue of Islamic edicts, and also is one of the issues of the day, and families are often face with this problem, so I decided to research in this field.

History of the research:
For writing of this thesis, the authentic books of Islamic jurisprudence and Islamic edicts were mostly used. The articles which credit reviewed and overviewed unconscionable dowry, and recognized legal and ethical rules governing the amount of dowry, have been examined. These articles were published in prestigious Journals and have academic background. The results indicated that there is no limitation assigned for dowry from. Verses, hadith or customs, it is determined by mutual consent, and whatever the amount of dowry is, the man have to pay it legally.

MATERIALS AND METHODS

In this thesis, the documentary and library methods are used. The author has referred to libraries to write the thesis.

Unconscionable Dowry edicts:
Part one: various dowry edicts:
First topic: dowry edict on apostasy husband:
If husband becomes apostate before intercourse, wife should be divorce from him immediately, but all of the dowry will be confiscated in her favor.

But the famous Imam jurisprudents believe that, after marriage women are the owner of entire dowry.

Article 1082 of civil law says: "Once married, the woman is the owner of the dowry, and can make any type of manipulation in it that she wants."

Second topic: Conflict of unconscionable dowries with criterion dowry:
Although the determination of unconscionable dowries is not forbidden by religion but it is obscene and indecent. Most of the jurists unanimously believe that the extravagant dowries are detestable. However, Islam does not specify a maximum amount of dowry, and left it to a mutual agreement. But the deeds and traditions of the Imams and hadiths always encouraged Muslims to set the light dowries.

Messenger (Muhammad pbuh) says: “Do not set unconscionable dowries, love and affection should be a God gift.”
If criterion dowry, as a factor to reduce the amount of dowry, becomes commonplace, and the dowries moderate with the respect to criterion dowry, the society will receive a huge benefit and Marriage of the young generation which has turned into a very big problem, will be easier. As they try to be at least somewhat close to criterion dowry. If it is hard to accept criterion dowry for today’s society, at least we can avoid from setting exorbitant dowries, and become closer to criterion dowry, for trying to resolve the conflict between unconscionable dowries and criterion dowry.

Third topic: Dowry edicts in temporary marriage:

In temporary marriage, if the husband wants to withdraw all time marriage before intercourse, he should bestow the half of the dowry. The term “bestow” here means that the husband should clear his liability, for example: clearing a lease term by tenant. And the term “all time” means the whole rest of the time of marriage. Even after marriage expiration, while they hadn’t have intercourse, if he wants to withdraw all time marriage, the edict will be same.

But if he wants to do so after intercourse, he should bestow the entire amount of dowry, even if it passed the decreed time and years of it are still left. The term “bestow” here denotes the agreements between couples and doesn’t have any specific edict.

It should be noted about the expiration of marriage that, divorce is only for permanent marriage, and expiration invalidates temporary marriage. Two state is considered for this from the Imami law attitude:

1. Obedience state
2. Disobedience state

1) If the concubine was obedient in entire time of temporary marriage (though there hasn’t been any intercourse), she deserves to get complete dowry and the man have to pay it.

2) If the concubine was disobedient, this state divides into two categories:
   A) Disobedience in all time
   B) Disobedience in a part of time

A) If the concubine was disobedient in whole time of temporary marriage, she deserves to get nothing from the dowry.

B) If the concubine was disobedient for a while in temporary marriage but she has been obedient for the rest of the time, the dowry should be divided and she deserves to get her obedience part, not anymore.

Paying unconscionable dowry:
Part one: How to pay unconscionable dowry:

Article 1083 of civil law says: “the whole or a part of dowry can be paid in installment.” Dowry payments can be set as following:

A) No time restriction and duration of payment

B) With time restriction and duration of payment

C) Some with time restriction and some without time restriction

If no specific time had assigned for paying dowry it is considered cash or on demand dowry. It means, after marriage woman can demand it whenever she wants, and if husband refuses to pay it wife has this right to be disobedient and avoid any sexual acts.

Dowry can be paid in installment; it means couples can determine specific time restriction and duration with mutual consent. The legislator doesn’t judge about the time and installment and let it to couple discretion. From the Imami jurists’ attitude on demand dowry is only for permanent marriage, and Payment of dowry along with marriage is one of the main conditions of temporary marriage. Anyway it is the man’s duty to pay the dowry to his wife, and as long as he doesn’t this he is responsible for any defect or loss of it.

If the dowry be deferred and the husband died before the prescribed time limit, the wife has this right to immediately demands the dowry from his heirs, because in case of death of a indebted person, his debt should be paid instantly or as soon as possible. On the contrary (if the wife dies before the prescribed time limit), her heirs cannot demand the dowry before the prescribed time.

Part two: Unconscionable dowry, cash and on credit:

If the determined dowry be cash and the wife agrees with deferring it. Can she deviate from her word and demand the dowry before the prescribed time limit?

If deferring the dowry has not mentioned in marriage contract she is permitted to deviate from its intended condition, because this condition is considered as a simple oath which to fulfill it is recommended, but is not necessary. Most of the Jurisprudents believe that it is not necessary to fulfill such oaths, because they are not legally valid. They are rather like promises that fulfilling them is desirable, no matter they are conditions of marriage or something else.

It seems that: Among the causes of skyrocketing dowries today is that most men are interested in accepting credit to pay costly dowries. Due to weak economic condition and financial inability to pay it in present or even
in predictable future, the man will get in trouble by which his married life impacts, and most of the times these troubles leads to divorce.

Part three: Dowry pass up, the reason of being permissible

The proof of being permissible of passing up the dowry by wife can be find in this verse of Quran:

« unless they remit it or is remitted by him in whose hands is the marriage tie; and the remission (of the man’s half) »

“If you divorce your wives before intercourse, pay them half the amount of dowry, unless they pass it up themselves, and your granting is closer to virtue, and do not forget to be generous with each other, because God is Seer of what you do.”

When a woman is divorced before intercourse, she can get half of her dowry unless she wants to pass it up and dedicate it to man, in such situation she must say: Although the marriage protector (father and grandfather) wants to give the dowry, the marriage cannot bestow all the dowry but can only provide some of the dowry as a gift for the couple.

The terms “pass up” and “granting” in the above verse and also in dowry issues are related to the situations that the dowry be objective or “Eyn” or wife has absolved her husband from giving dowry if the dowry be in form of due or “Deyn”.

If the due dowry be the obligation of husband, saying the “bestow” by wife is right and will realize. But if acceptance by husband is required or not?

It is a conflict but most of jurists believe that acceptance by husband is not necessary. If the dowry be objective just saying the word “bestow” is adequate, also they believe in such situation saying the word “absolve” is not acceptable, if the dowry be objective acceptance by husband is a necessary condition.

The last part of the verse about the generosity refers to both husband and wife, anyway, despite the disputes this generosity and donation has many types:

A) Husband pays the entire amount of dowry to his wife, then divorce him before any intercourse, and passes up the extra half that he paid.
B) Husband pays the entire amount of dowry to his wife, and she spent a part or whole of it, so husband’s generosity here is the same absolving her.
C) Dowry is by husband’s side, while divorcing and before intercourse he pays the entire amount of dowry to his wife, in fact he bestows the extra half to his wife.
D) Dowry is the obligation of husband, so the man’s generosity includes: determine the amount of dowry and transfer the ownership, in this case the wife’s acceptance is necessary. Only in type (B) it doesn’t matter to declare the acceptance with any words, but in the other types the declaration should be consist of the word “bestow”, because the word “pass up” is not considered as testimony for her ownership.

Part one: conflict between couples about costly dowries:

Conflict about dowry:

1- If there is a conflict between a couple about the merit of possessing the dowry, so that the husband says his wife doesn’t deserve to get the dowry and she say that she do, and they hadn’t have any intercourse, in this case the man’s words are acceptable as proof.

Saheb Javaher says: there is no conflict about this matter that it is possible to sign marriage contract without determine a dowry, as we can sing this contract with determining a dowry. So in the first condition (marriage without determining a dowry) husband doesn’t have any responsibility for paying dowry.

2- If a couple have no conflict about setting a dowry and the only conflict is about the amount of it, for example wife says 10 Dinar but husband agrees with 5 Dinar. In this case Saheb Javaher says: the party who agrees with lesser amount is right. Because less quantity is basis, unless the contrary is proved.

Imam Baqir (peace be upon him) was asked about a man who married a woman but never slept with her. So the woman claimed that her dowry was 100 dinars but the man said it is 50 dinars, also she doesn’t have any proof for it. Imam said: the man’s words along with swear are proof.

3- If there is a conflict between a couple about getting dowry, for example wife says I haven’t got my dowry but man says I have paid it. The wife’s words are proof, because in this case absence of the dowry receipt is matter, unless the contrary is proved. Man should bring a clear in this case and it doesn’t matter if they had intercourse or not.

Imam Baqir (peace be upon him) was asked about conflict between couples on dowry and he also said: if a woman bestowed her dowry to her husband, then she cannot demand it again.

Part two: Couples’ conflict about costly dowries in Imami edicts:

Imami jurisprudents have predicted couples’ conflict about costly dowries as follows:

A) Conflict about dowry body
B) Conflict about the amount of dowry
C) Conflict about delivery of dowry
D) Conflict about type of dowry
E) Conflict about time
F) Conflict about intercourse

A) Conflict about the dowry body is of two kinds:
1- Conflict before intercourse
2- Conflict after intercourse

This kind of conflict is about the dowry itself, as a woman demands her dowry from her husband and he says I don’t have it, without any more conflict about amount or determination of it. in such cases the husband’s words along with swear is proof.
Jurists’ opinion in this regard is unconditional and includes before and after intercourse.

B) Conflict about the amount of dowry:
If there is a conflict between a couple about the amount of dowry, the words of the party whom claims for undetermined dowry (a dowry that is undetermined and is based on the custom and norms of society) is better to be precede. So if man claims the lesser than undetermined dowry and woman claims for more, the verdict will be paying undetermined dowry. If both differently claim for more than undetermined dowry, the verdict will be either the man’s claim or paying the determined dowry (a dowry which can determine by agreement after marriage). And if both claim the lesser than undetermined dowry, some jurists believe that the verdict is paying undetermined dowry.

C) Conflict about delivery of dowry:
If husband after confessing to determine the dowry claims that he has delivered it to his wife, then most of the Imami jurisprudents and some of the Sunni jurisprudents such as Shafi‘iyah and Hanbali believe that the woman’s words are proof because the action(delivering the dowry) is not clear.

D) Conflict about type of dowry:
If couples have different opinions about the type of dowry, most of the Imami jurisprudents say that the woman’s words are preceded. Most of the public jurisprudents also say that if this conflict occurs before intercourse the marriage terminates with having couples to swear. But if the conflict occurs after intercourse the marriage doesn’t terminate and undetermined dowry will be given to woman, on the condition that the amount of undetermined dowry doesn’t exceed what woman claimed, and be less than what man claimed. Mohaghegh says in Sharaye’: the man’s word is absolute proof.

E) Conflict about time:
If couples have conflict about time of dowry, though some jurists in this case, give the primacy to the husband's words, but most of them say that the woman’s words are preceded.

F) Conflict about intercourse:
There are some possibilities here: if woman for proving her right of disobedience and getting the dowry as cash claims they hadn’t intercourse. If man for proving that woman’s disobedience is illegal claims they had intercourse. If man for paying just half amount of dowry claims they hadn’t intercourse. If woman for getting the entire amount of dowry in addition to alimony claims they had intercourse. In all these possibilities the words of the party who denies the intercourse is reliable either be husband or wife.

Mohaghegh-e- Helli says: if there is a possibility for man to prove his words so that woman claims they had intercourse but it turns out that she is virgin so the conflict will terminate. But if he can’t, the man’s words are proof. However, some jurists say the woman’s words are proof.

Conclusion:
Unconscionable dowry usually have a negative impact on family’s Financial and nonfinancial affairs, it reduces youth interest to marriage which associated with many problems in society. To solve this problem, the jurisprudence and legal study of “determining the amount of dowry” is essential. In order to do this, its better to determine the legal and ethical principles for the amount of dowry, by which have a step ahead in solving this problem.

God Almighty says in the Holy Quran:
» is the nearest to righteousness. And do not forget Liberality between yourselves. For Allah sees well all that ye do»

“Should single men and women, slave girls, and servants marry each other, and if they are poor, they will be needless by the grace of God. And God aware of humans and is mighty merciful.”
The results include: the Shari ‘a (Quran, hadith and the words of Jurists) are not considered a limitation for dowry, light dowry has been emphasized and unconscionable dowry has been criticized. Determining dowry depends on the both parties satisfaction, whatever the amount of dowry is, the man have to pay it legally.

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REFERENCES