



Jurisprudence of the Courts to Determine the Maximum Dowry

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ARTICLE INFO

Article history:

Received 20 January 2014

Received in revised form 16

15 April 2014

Accepted 25 April November 2014

Available online 5 May 2014

Key words:

dowry, kinds of dowry, amount of dowry, conventional dowry, dowry confinement

ABSTRACT

The dowry of women for permanent and temporary marriage was approved in Islam and GOD has emphasized to pay a dowry to women in the Holy Qur'an. Despite of recommendation of the Islam for scant dowry and abomination of high dowry, in recent years the determination of heavy dowry by the couple, sometimes man cannot fulfill it and it is the common legal problems. This paper has been written based on analytical-descriptive methods about the following questions:

1- what is the position of determination of maximum dowry in case law and religious jurisprudence?

2- Do dowry in marriage means "price and the purchase the woman and is the man lordship over women"?

- Is the dowry an established provision of Islam or pay it to women was before the advent of Islamic books?

4- What is the effect of determination of maximum dowry in reducing prisoners?

During the writing of the research, the researcher's effort has been due to approval of the "dowry" at the Family Protection bill which required a 20% of Law Financial convicted for dowry will run up to 110 coins and more of that will be dependent on, the man Self-paired, achieve the following results:

1- Despite of Islam recommendations on reducing the amount of dowry for simple marriage, keeping up with the Joneses, the lack of economic security for the women, as a means of holding pressure during the separation, abuse of the tool as a source of income for some women, are the main reasons for increasing the dowry in IRAN.

2- There is no reason of limitation the amount of dowry neither Quran nor tradition; but there are some reasons that let the couple to determine the dowry according to consent of the parties.

3- The primary and main cause of Youth reluctance to marry is not the high dowry, but there are problems of unemployment and inflation and the cost of getting married, preparing a home and then the cost of shared living.

4- Dowry determination by the Legislator must reduce the number of prisoners.

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To Cite This Article: Elahe Jor, Dr. Mohammadreza Keykha, Majid Jangzei Shastan., Jurisprudence of the Courts to Determine the Maximum Dowry. *J. Appl. Sci. & Agric.*, 9(4): 2015-2026, 2014

INTRODUCTION

Marriage is allowed as a social link, in order to achieve certain goals and interests, impose an extensive set of rights, duties and obligations of mutual which the obligation to observe them from the monitoring and control, ethical, legal, religious organizations are guaranteed to couple.

Marriage in Islam has both "right and duty" to follow:

1- Non-financial Rights and obligations

Financial Legal and obligations, amongst financial rights, husband is obliged to pay the dowry of his wife; So by marriage and the husband's right of enjoyment, the dowry is the money which the wife is owner of it instability and of course there are some certain conditions for the woman ownership. The dowry is one of the marriage principle and the financial Rights of Women, in the marriage as one of the pillars of the financial rights of women, because most of the legal aspects, no less than the non-legal aspects (like the canonical question of dowry) is located. The Islamic pattern, after reflecting on the concept of dowry as portion, gratuity and the description and quality described in the verses and traditions, all the interpretation and presented are confirmed it as a gift. According to the emphatic recommendations for the less dowry and establishment of religion in its economic value and asking women to forgive it satisfactorily as a way for further strengthening the foundation of the family, many number of unreasonable dowry which it is impossible to pay is a social problem; It is evident that the majority of the cultural, ignored this financial right and famous proverb "who gave the dowry who made!" are based on judgment and action, we're witness of the rise of the uncontrolled dowry amounts,

free from any measure and use it in emergencies, such as divorce and finally the rise of dowry prisoners and use of the right of lien.

Accordingly, the Guardian Council with the approval of the National dowry 110 gold coins has tried to manipulate the dowry; so that if dowry in the event of a marriage is 110 gold coins or its equivalent, Get it contains rule of implementation of the financial convictions and if the dowry is much more than this amount, the payment will be the solvency of husband.

Although some scholars believe that bride price shouldn't be more than dowry of the year, but most jurists, have rejected this view. Because there is no Hadith about the determination of upper limit of dowry, even there are some had it in its form in imizing the dowry which recommended a lot. But there are many traditions and stories demonstrate the importance of payment of wife's dowry. The supporters of determination of upper limit for dowry believe that: "Many families who cannot pay the dowry are torn apart and it's the main reason of divorce in the country." Hence, these factors as the reasons of upper limit determination of dowry.

However, according to available statistics results, about 80 percent of the divorce was about this reason in country and dowry, as a form of independence which can be the subject of divorce, will not study in this research and more as a tool against women to limit their rights for making divorce. Accordingly, it can be concluded, that the determination of upper limit for dowry to 110 gold coins will look very absurd, because payment of the national dowry! Is also unusual due to its "When prompted" position and it is not payable; do legislators think about solution or just void of dowry prisoners?

The main research question:

From opinion of Shiite jurisprudence and the law theme of Iran, what is the position of the determination of upper limit for dowry.

Sub-questions research:

- 1) If dowry of bride in marriage means "Pricing and purchase of bride and also means absolute Lordship of husband over his wife"
- 2) Dowry is one of established provisions of Islam or before Islam, giving dowries to women was common?
- 3) What is the effect of upper limit determination for reducing number of dowry prisoners?

Hypothesis:

- 1) About dowry there are two views in Shiite jurisprudence, some people believe that the dowry amount should not be more than five hundred dinars; second, contrary to the first opinion believe that, there is no maximum for dowry; the license is also emphasized in Article 1080 of the law.
- 2) Dowry is the Property from the couple which the woman will acquire, if a man took a woman to the marriage and gives her an house as dowry, institution of dowry in Iran is based on tradition of Islamic jurisprudence and never means the price and the purchase of the woman and the absolute lordship of man over women.
- 3) The manner of giving dowry to women was before Islam and the oldest document is about Hammurabi rule which has been developed in about 1700 years BC and it contains 282 articles, in acts number 19 and 18 cited that if a woman was in fertile and divorced the husband is obliged to give her dowry.
- 4) Legislation methods in order to determination of dowry by couples will reduce number of dowry prisoners but it has many legal and religious problems.

Theoretical definitions of words:

Marriage: the legal relationship between man and woman which gives them the right to enjoy sexual pleasure from each other.

Dowry of bride: dowry is an Arabic word and the best Persian equivalent for it is "kabin" or (under contract) and its common terms in Arabic: (Mahr: Sedaq), duty and wages.

The right to lockup: Right of lien is a right that if there is no commitment from the mutual, the other side can refuse to Job-dedicated or price.

Restricting dowry: its purpose to determine the upper limit for dowry according to Article number 22 of the Law was adopted on the protection of the family as national dowry:

If amount of dowry in marriage to be one hundred and ten coins or its equivalent, taking it is include article number 2 of conviction off in financial enforcement.

If the bride price is greater than this amount, just a couple solve cases as the payment criterion. Updated provisions relating to the calculation of dowry is required.

Literature Review:

Research and studies concerning the study of jurisprudence and legal upper limit for dowry, in Courts:

1- Sociological explanation of dowry in the legal family system in Islam, by: Seyed Hossein Sharaf Aldin, Qom, Imam Khomeini Educational and Research Institute, 180.

This article is in the form of an introduction, six chapters, and a Note entitled "Conclusions and Recommendations" and sought to regulate the phenomenon of dowry views non legal review. Also, it is not intent to analyze the dowry as anthropological and sociological (theoretical and an alytical approach) which in Compared to the other surveys, it is something new.

2- Legal status of Heavy dowry in permanent marriage, Seyed Hassan Vahdati Shobeiri, Journal of Islamic jurisprudence, the fortieth year, No. 81, 187. The abstract of this article reads:

Abstract: Now a days in Iran and some other countries it is customary which further validation of marriage needs high dowry and the public think that with much more dowry, the marriage becomes more robust. Regard less of the negative charge of the moral habit, heavy dowry can also determine the legal consequence to be followed. This paper is the legal status of these types of dowries. The research hypothesis is that high dowry by itself is not a reason to invalidate it. But if dowry, considered above the common afford of man such that at marriage time the wife knows that her husband cannot pay her dowry, she doesn't have the lien right anymore. In this study, recommended to the legislature as a secondary act for article 1085 BC considered an upper limit for dowry.

3- Master's Thesis titled: Religious and legal analysis of limit the amount of dowry Possibility, Supervisor: Mahmoud Sadeghi, Advisor: Mohammad Parsapour, Student: Mohammad Mehdi Asadi Amirabadi, Year: 188, Faculty of Humanities.

It is the abstract: According to the general rules of jurisprudence and legal contracts for solving the problem of high and unconventional dowry can provide some solutions And mention that if the amount of dowry was high or unconventional which husband cannot pay it, or there is no serious willing for its adoption or implementation, or as common view its amount is high enough which accept such a commitment is not rational, according to these three rules of deliverable. Having a serious plan in agreement And Rational, the legislator can limit it to the extent that is possible and reason able.

4- The Book, dowry from the perspective of philosophy of law and jurisprudence, Author: M. Esmaeili, Tehran University Publications Jahad. Year: 189. In this book the researcher express the lexical and terminological definition of dowry and traditions and verses about it.

5- Legal validity of high dowry, Muhammad Ali Saeedi, Journal of Law, Faculty of Law and Political Science, Volume 40, Number 101, Spring 89. Abstract of this paper are as follows:

Determination of High dowry by couples which husband cannot pay it, it's a common legal problems. Often couple is responsible for dowry, while the circumstances indicate it is committed cannot pay it now, even he cannot pay it in future. These kinds of dowries are rejected Due to the impossible delivery which has been mentioned by some law professors, but this problem wherever researched in the law has not been invoked. In author opinion, Invalidity of dowry by citing to aforementioned reasons is possible only with adopting some of the principles and after discussing various possibilities, the belief in the invalidity of the high dowry due to lack of delivery is preferred.

The research method used in this study due to the nature of subject, qualitative content analysis and inference is performed by using a library tools. The purpose of this research is the data collection and analysis to achieve sired outcomes research. In qualitative content analysis, the researchers sought to determine to analysis specific content; so who can answer the questions or research purposes, For example, the main objective of this study was jurisprudence and legal basis to determine the upper limit for dowry in the courts, researcher seek the content that can achieve this goal; The purpose of qualitative content analysis is not quantitative counting.

MATERIALS AND METHODS

In this section we review and discuss the research questions and they will be answered based on the facts. Review of first question: what is the position of determination of maximum dowry in case law and religious jurisprudence?

To answer this question from four points of view; Quran, narrative (for both), Iranian legal, also narratives (In particular, the Shiite and Sunni jurisprudence as a separate) use in Shiite and Sunni jurisprudence Islamic. One of the accepted legal institutions in Islamic law is the "dowry" of the permanent marriage. The related topic is the amount of dowry. Nowadays skyrocketing rates of dowry and perhaps gets away from the wisdom and nature and its laws are concern. Religious Pattern recognition of dowry amount and legal and ethical rules which govern it and some of the dowry increment in present age can be effective in reform of situation.

It seemed that the amount of dowry is not emphasized in Islam and it is not necessary to interfere and also determine the range for it will not be consistent with expedient. Even on the assumption of interest, perhaps it can be claimed to be impractical. The binding legal action for appreciation of dowry will not be deserved and effective and it would defeat the purpose. To prove the point of the axis of jurisprudence, law verses also use legal rules.

- *The first axis, the dowry in Quran:*

The word dowry is not mentioned in holly Quran but the word charity and its plural charities are used. Holly Quran in many verses describes the aspects of legal and ethical of dowry. One of the most striking point in these verses use of various interpretations of charity, comfort, and reward for introduction of this financial right. Likely that, in addition to observing entertainment and eloquence, it implies the number of cases.

The Qur'an, in addition to legislation and determination of dowry, obligate to pay it completely and implicitly, mentioned to respect to the rights of his wife.

About the amount of dowry in Quran absolutely mentioned: Pay dowry to women and there is no limitation on that and perhaps the term is used:

Among the verse:

وَأَنْتُمْ السَّاءُ صَدَقَاتِهِنَّ بِحُلَّةٍ فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا.

Pay the women dowry (completely) as a liability (to a gift) and if they give you back the dowry satisfactorily, it's allowed.

This versede scribes the necessity of determining the payment and high or low amount of dowry.

There are no other verses about determination of dowry; but some of them implies to unlimited amount of it: for example:

وَإِنْ أَرَدْتُمْ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِنَّمَا مُبِينًا (20)

And if you decideto select another spouse, instead of your current wise and you paid so much property as dowry, you shouldn't get anything of her. Will you commit the slander and the sin for retake woman's dowry?

Ragheb said: bridges property which means the property that is for living your life, as they crossed the bridge, this property crosses over your life (ie, enough property) and its amount is not limit. The verse broadly implies: Dowry is emphasized a lot of property which implicitly used for giving so much dowry to woman but it doesn't mean that high amount of dowry is encouraged; it emphasized that if a lot of property placed for dowry, not trying to take it back. So legal rules that are derived from the revelations of the legislation are based on the dowry. These are:

- 1- The dowry has a certain amount.
- 2- Putting a lot of money for adowry is not prohibited.
- 3- The amount of dowry is not emphasized. This is appropriate of verses but this is appropriate narratives:

- *The second axis, the amount of the dowry in tradition*

About the determination of dowry, there are several tradition categories:

First category, they are stories which stipulate the necessity of dowry for marriage:

- 1- Prophet said: When God created the world, he was not created gold and silver yet, And when Adam and Eve had fallen to the ground, Gold and silver were also revealed long with them and flow as well as a river for their children that will come later and God make those rivers as dowry of Eva, so it's not deserve to marry someone without dowry.
- 2-Narrator said I asked Imam Sadiq: I married to a woman; do I allow flirting with her before paying a part of her dowry? He said: Yes, dowry is a religious obligation on you.

The second category is the story which refers to blame the man for not paying or even the thought of not giving the dowry of his wife:

- 1-Imam Sadiq said: A man marry to a woman who does not want to pay dowry, he is adultery.
- 2- Imam Sadiq said: The man who set the dowry forth is wife, but does not pay it, he is a thief.

The third category is those who referred to recommendation of giving dowry to man by his wife:

- 1-Imam Sadiq said: punishment of the grave has taken of three tribal women and will be gathered with Fatima daughter of the Prophet: the woman who is patient with the zeal of her husband, a woman who isstead fastin the face of her husband' sbad behavior and a woman who gave her dowry to her husband. God gives to every one of them, there wards of at housand martyrsand reward of a year of praying of the GOD.

Forth category is types of traditions that refer to high amount of dowry:

Imam Baqer said to one of his companions:Do you know why women dowry has been determined to four thousand dirhams? He answeredno. Then he said: when "Om habib" daughter of "abo sofyar" was in Abyssinia and Najashi married with her and he gave her four thousands of dirhams and it was the fact that women will demand a dowry, but in fact, it's twelve "ounce" and a "Nash".

In a class of the narratives, amount of dowry presented as customary which judge's involvement is not necessary; this is where the job dowry is not determined, dowry ideals will be realized. Imami's jurists have two ideas about dowry ideals: most of the jurists think that dowry ideals shouldn't be more than dowry of year. Their

documents are texts but second group didn't determine any upper limit for dowry ideal and there are some factors in dowry ideal determination for example Dignity, beauty, virginity, information, time, place and situation, etc. they are all to be considered.

In a set of traditions specify amount of dowry more than dowry of year is not allowed; Sunna dowry is based on Highness Zahra's dowry who has been determined by holy prophet. There is disagreement between Shia and Sunni historians in the dowry of Highness Zahra, various views have been referred. Four hundred dirhams, 480 dirhams, 500 dirhams, ounce... amount of dowry narrated for highness Zahra. Accordingly, some of Emami's jurists have the opinion that dowry can't be more than five hundred dirhams; Sunna dowry recommended as dowry, it's about 500 dirhams and more than that is execrable. Some Imams did not consider more than with value and said: if amount of dowry is put more than Sunna dowry, it refers to dowry of year and give more than that is not the husband's duty.

Well, sometimes high dowry causing hostility:

1- Holy prophet said: Do not take a high dowry, God must provide love, money and property do not provide love.

There are other sorts which assigned the amounts to them by mutual agreement:

- 1- The narrative of the second Caliph: when "Umar" on altar prohibit Muslims from excessive dowry (put something's very valuable as dowry of woman), a woman told him: Do you prohibit us from our rights which God has given? And she recited this verse. Umar said: even women are more jurist than Umar..
- 2- In some traditions, little amount of dowry were emphasized.

Top woman of my nation is a woman whose beauty is more than her dowry. transported from major source of Bharan var Vol.10, 247)

The following rules can be deduced from these narratives explicitly:

- 1- There is no determination for amount of dowry.
- 2- Put a lot of money as dowry to the woman is allowed.
- 3- The criteria for determining the amount of dowry is mutual compromise.
- 4- Not paying a dowry to the woman is abominated and condemned.
- 5- In other traditions dowry is not considered to be more than the dowry of year.

Authoritative legal opinion obtained, not specify the amount of dowry and mutual arrangement will be determinant as follow:

- *The third axis, the amount of dowry right in Iran:*

Determination the amount of dowry is by couples, as legislators in act 1080 follow the theory of jurists and provides:

Dowry determination is subject to the consent of the parties. There is no rule for job dowry and couples are free and they can determine any value for dowry of bride, so dowry can be a poor value of everything with above condition, for example like a candy or several million.

According to the condition of dowry, although there is no upper limit for dowry but at least it should be something which can be a property and put value on that. Otherwise, if the dowry is small enough that makes it out of the taxes, in article 1078 of law the dowry is avoided.

- *The forth axis: the amount of dowry in jurisprudence:*

- 1- The amount of dowry in Imam's jurisprudence

About the amount of dowry in jurisprudence, the popular idea is that the determination of dowry is subject to mutual agreement of the couples and there is no limitation on that out of mutual agreement of the couples. The minimum amount of dowry is not limited and what is necessary is that the thing which determine as dowry should be a kind of property and religiously can be a property of a Muslim and in a large part it's unlimited.

Generally the reasons which supported for essentiality of determination of dowry are as followed:

Qentar verse:

The twentieth verse of women's chapter in Quran: And if you decide to select another spouse, instead of your current wife and you paid so much property as dowry, you shouldn't get anything of her. Will you commit the slander and the sin for retake woman's dowry? In this verse argued about marriage and divorce that forcing the woman to give back dowry to her husband is prohibited; and also because the "Qentar" mean so much money, above mentioned verse is a reason of unlimited amount for dowry and God said: pay your woman's dowry even it's so much. it means that there is no limitation for amount of dowry. Because if it was otherwise, God

determine a limited amount of dowry for paying to women and clearly the men would not be prohibited from regain his wife's dowry

Therefore, this verse implicitly permits the men for paying so many dowries to women, although some commentators said that some part of this sentence can be conditional and its license will be uncertainty.

General traditions in holly Shia means book, there are many traditions that indicate no restrictions on the amount of dowry with mutual agreement of couples. For example, some of them mention in below:

1- Imam Baqer said to one of his companions: Do you know why women dowry has been determined to four thousand dirhams? He answered no. Then he said: when "Om habib" daughter of "abo sofyar" was in Abyssinia and Najashi married with her and he gave her four thousands of dirhams and it was the fact that women will demand a dowry, but in fact, it's twelve "ounce" and a "Nash".

2- In several times, act of some prominent Muslims and Imams indicate that they paid more than Sunna dowry to women for example:

- "Arinab" daughter of Isaac was very beautiful and her beauty was like a proverb in population, Abdullah son of Salam, one of her cousin divorced her, Imam Hussein got married with her and he gave her so many dowries.

4- The second Caliph "Umar" married with "Om kolsoom", daughter of Imam Ali, give her 40 hundred dirhams for dowry. The ones who said this comment, have rejected the reasons of other jurists (discuss in follow) and they said, their narrative citation is extremely weak and because of strange reason it has not been considered by any jurists.

In opposition, there are some licenses for restricting the dowry. This possibility in language of jurists is as a theory. The late seyed Morteza has opposed with high amount of dowry. In his opinion it's a specification of Imami which the dowry more than Sunna dowry is not allowed (500 dirhams) and if anybody determine the dowry more than that, will be replaced with Sunna dowry. For example, it came in "Who do not attended jurists" that in tradition of prophet the dowry is 500 dirhams, so if anybody make it more than 50 dirhams must goes back to determined value and if the man pay a dirham or more than one dirham before spousal and the wife accept that and then sleep with him then not owe anything and the wife has the same value as before entry.

As a result, although there are difference between the Imami jurists about maximum and minimum of dowry; but the subject was the difference and about the amount of dowry, there is difference between Imami jurists; some of them like Seyyed Morteza, Sadooq and skafi believe that the amount of dowry shouldn't be more than Sunna dowry and if it was more than that, the dowry should have been gave back to the determined value. For example most of the Imami jurists, with the traditions which are cited by seyed Morteza and twentieth verse of women chapter added that if amount of dowry was more than amount of Sunna dowry is execrable. But demos of jurists both Shia and Sunni didn't accept these traditions by cited to reasons mentioned traditions in Sunna dowry, some other said that accept the amount of Sunna dowry is necessary.

B- In opposite of this idea which minority of Imami jurists believe on that, majority of Shia jurists believe that there is no upper limit for dowry. "There is difference in amount of dowry, it's from dirhams to dirhams net silver, but in Shia jurists there is no minimum or maximum, the amount which can be appropriated."

First evidence: Any amount (Maximum or minimum) of dowry is not valid, so any object with any value can be used as dowry.

1-The amount of dowry in Sunni jurists

Unlike the minority of Shia jurists allow limitation of dowry, the jurists of all Sunni's traditions agreed to upper limit of amount of dowry. All jurists of Sunni believe that, there is no reason in Quran and tradition for limitation of dowry but there are some reasons which allow the couples to determine the amount of dowry with mutual agreement.

The Quranic reason is twentieth verse of woman chapter which majority of Shia jurists cited and they also have the story of the second Caliph which when "Umar" on altar prohibit Muslims from excessive dowry (put something's very valuable as dowry of woman), a woman told him: Do you prohibit us from our rights which God has given? And she recited this verse. Umar said: even women are more jurist than Umar.

As a result, the dowry, there is no certain quantity of the resource in religion. Although in many traditions demand of little dowry has been recommended, but according to verses (women, twentieth verse), narratives, actions of some Imams, companions and some of well-known figures in Islam and biography of some jurists demands high dowry depends on financial ability of couple is allowed.

If dowry of bride in marriage means "Pricing and purchase of bride and also means absolute Lordship of husband over his wife"?

For answering this question first we need review different usage of dowry word and several meaning of dowry, then as the result of discuss and true wisdom of putting dowry, by citing to verses of Quran we answer to the question:

A) Dowry in word:

Dowry of bride: dowry is an Arabic word and the best Persian equivalent for it is “kabin” or (under contract) and its common term in Arabic: (Mahr: Sedaq), duty and wages.

Dowry is also called “Win” and “Less Sad”, to advise that the generous person who give the dowry for marriage.

Orbecause it's a sign of true faith:

The meant of Dowry (sedaq) is dowry of bride. The reason of this appellation is its grant just because of man's love to his wife and movement means gift from man.

B) Dowry between jurists:

Between jurists there are several reasons which said that dowry is belong to woman and they can be divided to these category:

“In definition of dowry general sciences made decision based on masturbation.” Maleki” said: what's for wife, through masturbation of her.” Shafyh” said: dowry is necessary due to marriage”

C) Dowry in law:

Lawyers in definition of dowry emphasized the appropriate of woman over the dowry and in Iran's law, from article 1078 to 1101 talked about dowry, most of them follow the Imami jurists as dowry which is not defined and kept quiet. Imami jurists did not mention the definition of dowry in their book and indicated the subject, perhaps for fame and notoriety of the word dowry, because everything which can be appropriated is a kind of dowry (article 1078), the lawyer defined the dowry like this: dowry is a property which a woman owned due to marriage and the man should pay it to his wife.

D) Dowry in Quran:

In verses of Quran there is no word of dowry and plural words and synonyms of dowry has been used. Quran in some verses describe the moral and legal of dowry.

وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبَّنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا.

Pay the women dowry (completely) as a liability (to a gift) and if they give you back the dowry satisfactorily, it's allowed.

Meant of dowry is dowry of bride:

One of the most striking point in the severes, usage of various interpretations of charity, comfort and reward is the introduction of this financial right that likely, in addition to observing Entertainment and eloquence, it implies direction multiplicity. Quran in addition to legislation and determination of dowry, it also made an obligation to pay the dowry completely and implicitly, mentioned the respect to the rights of the wife in different formats.

E) Dowry in social usage:

For the specified meaning of dowry in the present day, therefore social functions of dowry can use as evidence:

- 1) Dowry as a social tradition in response to the indigenous needs of women, in order to keep her dignity play an important role in the regulation of relations between men and women. Dowry is based on characters and independent of woman, not the price paid to female relatives.
- 2) Dowry as a social tradition in response to the indigenous needs of women in order to keep her dignity, plays an important role in the regulation of relations between men and women. Dowry is based on characters and independent of woman, not the price paid to female relatives.
- 3) Some Islamic jurists, marriage request of the man of a woman and the man's humble despite of his natural arrogance, a sign of respect for women and the strength of family and his desire to pay a significant amount of dowry is a sign of his interest, and emphasized the superior status of women. Able to get a high dowry, especially for women who are not perfections and doesn't have other social benefits, is very suitable for pride and satisfaction of desires. The existence of mental functioning-social, it is a good stimulator to provoke the appetite. According to this theory, gift of the dowry which is one of the most common approaches is the interpretation of the Islamic Jurists, Obviously giving large amount dowries, Show more eloquent than the common understanding of the status of women and more likely to be seen as a sequence of requests and provides functionalities expected.
- 4) In fact, the emergence of dowry is the result of tact and related to spiritual emotion of couple which in the context of creation, for the adjustment the relation of men and woman and used to their relationship with each

other. The dowry was found that in the context of the creation of the man and the woman their roles are inconsistent in love issue with each other. This law has spread across the universe.

5) The best way among the several of way of determination of dowry in Islamic pattern interpreted gifts and presents as symbolic value. The base of dowry is respect and dignity of woman; usually gift is presented to someone who is the owner of your heart and you respect her. Reflect to the concepts of gift, movement implicate its grants. Legislation quality and its description in the verses and traditions, strict ethical guide lines to minimize the amount of it establishment of religious tolerance in calculation of financial and economic value with presentation of some spiritual equation, order to the woman's forgive nessas a way to further strengthen the foundation of the family, its legal status, like neglect in determining of amount and referring the mutual agreement, assign the ownership of property to his wife despite to provide her primary and secondary needs as obligating the man for paying alimony, its establishment upon signing the marriage, There is not in marriage (Unlike changes in trade), and the lack of some laws and rules which are prevalent on transaction, like tricked and fraud and etc. Couples shared sense of belonging and the need to establish the link and benefiting almost equally from the spiritual consequences (as a result, the absence of suitable equivalence for dowry), analysis of the marital status of men and request of marriage and his urges and etc. verify this financial right as a gift.

6) Some Muslim scholars know the dowry as a legal financial right of women in Islam and also it's supplement of his inheritance in this system.

7) Although nowadays the existential philosophy and legal nature which the most of woman and their families are desired for determining the dowry, is "To ensure the continuity of marriage" and basically, while determining the dowry religious part of dowry is less attractive for couples. But as noted the dowry is like a gift from men to women and the reasons of those who think the dowry is the price of woman and idea of those who compared it as a gift in an illegal relationship, all of them are unacceptable.

Review of second question: Is the dowry an established provision of Islam or pay it to women was before the advent of Islamic books:

Contrary to the impression of many people who thought the dowry is the innovations of Islam, It must be said that the issue of dowry is the signature rules of Islam this means that Islam had accepted dowry and it also has been improved by Islam so the Islamic influence on dowry caused it became a spiritual matters from material matters, perhaps in period of human's life the dowry was the price of woman really.

The manner of giving dowry to women was before Islam and the oldest document is about Hammurabi rule which has been develop dinab out 1700yearsBC and it contains 282 articles, in acts number19and 18cited that if a woman was in fertile and divorced the husband is obliged to give her dowry.

Marriage and the Family in Ancient Iran had been allowed right with a single woman for riches:

In ancient Greece including some ceremonial for marriage was the girl's father has not agreed without receiving money or gifts from the groom plus transfers their rights to the groom.

In Indiatoo, as it comes on the Zoroastrianism, tradition of giving dowry, have been more or less pread; although it applies to all religions and movements of live and active and claimits presence in all religious traditions and secular common doesn't have enough authenticity.

Dowry among the pagan Arabs has basic position in legal marriages. And only after payment of dowry-suited law relations would be allowed. Marriage without dowry considered an offense and will deal with it as a concubine. Arab women inromantic relationships were encouraged to marry without dowry but with the concern of such a tended relationship avoided it.

What is the effect of determination of maximum dowry in reducing prisoners? To answer the above questions, the following arrangement sare necessary:

- *The first axis, the right to lock up:*

The scholars agreed that a woman, whose husband didn't intercourse with her, can refuse to be touched before receiving the dowry; because if a woman has no right to refuse it, causing hardship and oppression and disadvantage for the woman.

The wife upon marriage is the owner of dowry and before entry she can receive her dowry, although Issuance executive is not morally good.

If the husband refused to pay dowry, she can make use of the right of lien.

Right of lien is the right that if each party didn't mutual commitment can refuse to give sales or price.

Thus the right of lien is a suitable guarantee for repayment of dowry by men and receives by woman but insolvency of husband doesn't deny the woman to use of this right. Meanwhile, if in a marriage the couples didn't determine the dowry of bride or make a condition for no dowry .there is any right of lien for woman.

- *The second axis: determine the upper limit for dowry as cure of remedy:*

Nowadays, the object of dowry increment have some problems for govern and people and even in families and society have become critical; Therefore the dowry is natural right, no person doesn't have right to limit it, Because higher than human's willing and law theme like basically law and etc. Holly legislator also didn't accept the upper limit of dowry and never determine any value for that.

Last attempt for organizing the dowry, took place by seventh representatives of parliament. Representatives of council with the aim of all laws and regulations in country must facilitating family formation and should be based on Islamic law; make decision to set a specific upper limit for dowry.

Proposed to put 110 gold coins for dowry Akhavan impartial representative of Esfehane's people in the parliament told them. Akhavan as mentioned to this point that many people are in prison just because of high dowry and inability to pay that, said that the government in this regard should take the necessary steps and however, the dowry say that it was not true "who gave the dowry who made", the people also gave and took it. Akhavan said: we suggest that if the dowry is up to upper limit of 110 gold coins, is entitled to article 2 of the act financialconvictions to receive it and If it is higher, the bet will be considered the financial ability of couples. He also emphasized the culture of determining the dowry and said: Irrational amount of dowry has created problems that need to be considered.

Opponents to this topic that dowry is the subject of religious expression and should not be involved and condemned the login of government and law and it will cause new problems in society. Abhari, Social Pathology, in an interview with Tehran today, referring to the fact that the dowry is a social and historical traditions, said: In the last decade determining unusual things like coins as high Mount Damavand, date of birth, or a tone of onion skin, a heap of roses, two wild swan, etc... although they do not have financial value but it creates negative competition between families and young people, and in directly decrease number of marriage.

He also said: we thought of legislator's login to dowry, because in Islamic law and custom and tradition dowry is the right that determine with mutual agreement of couples and no one can determine any upper or lower limit for that because such behavior causes other abnormalities, it means that perhaps a law be observed apparently but decide that and according to secret agreement other actions to be performed. Abhari pointed to the existence of more than three thousand prisoners of dowry in prisons said to Tehran today: Such a law can only increase number prisoners and cause the breaking the law. Instead of these laws and regulations is better to do it culturally. The experts in the media, Artists in series and films pay attention to dowry subject and their family and children prevent them from negative campaigns. He emphasized that: determine the upper limit of dowry is not even possible but also may be causing to lie just because anybody doesn't not update its financial ability for others, then what happened is inability to pay the dowry that the result will being in a prison and I suppose that this movement just cause more behavioral abnormalities and decrease marriage rate. Finally, with the pros and cons the article 22 of family protection law was passed by this content: If the dowry at the signing up will be one hundred and ten gold coins and its equivalent ☒

Subject to the provisions of act of financial conviction law of its receipt. If the dowry was more than this amount, about the superfluous, just a couple solvency criterions are paid. Provisions relating to the calculation of daily rates of dowry are still required.

- *The third axis, Major Causes of Divorce in Iran and the reasons of women for using the right of lien*

However, H. Hamidian Supreme Court judge and professor of law; also A. Karimian, professor law and political science at Tehran University which direct and continuous contact with families who have had claims problems, according to the statistical results rising divorce are not due to dowry case. For example, According to statistics gained in real documents, the 80 % of divorce cases have introduced irrevocable divorce. Irrevocable divorce means that she has passed all her legal and religious rights so she can say that "I solve my dowry to free my soul" The study was conducted in a total five hundred cases of divorce and the reasons were as follow: The intentionally left of wife and husband for 6 months without any valid reason.

Addiction to harmful drugs

He did not pay alimony

Misbehavior and adverse interaction

- Got marriage to another woman if he can't afford the justice.

- Employment in conflict with the interest reputation of the wife and family.

- Couple definite conviction to imprisonment in aspects of crime against the wife.

- Addiction to alcoholic drinks

- Couple Catch some incurable contagious diseases

The above statistics indicate that dowry demands for independence that it could be the subject of divorce, it's not placed in this research.

As long as there was a way for our woman to continue their live, never use the tool of dowry. Also Hamidian said that more than 67% of divorces not paying the dowry, Addiction, Early marriage, Forced marriage, infidelity, imbalances between physical and economic maturity and others involved in couple's privacy.

Author as regards to the parts above analysis the problem of “determination of upper limit for dowry”:

- 1- Because the dowry mustn't be no par value and it should be valuable and worthwhile; or it shouldn't be so invaluable which seemed to be like a gift for illegitimate relationship; there is no upper limitation in perspective of amount and value, so the couples can make a mutual agreement on any amount of dowry.
- 2- Although some jurists said that dowry shouldn't be more than Sunna dowry, but must of them are against of this opinion; there are some anecdotes for disesteeming the dowry, but also there are some anecdotes and narratives which indicate the importance of dowry and its payment to the wife.
- 3- According to what passed, Holly prophet said: The God absolves each guilty except the husband who does not pay her wife's dowry; Imam Sadeq said that three kinds of the filthiest guilty are: 1.keeping the woman's dowry and he called the man who doesn't pay his wife's dowry as a thief and its indicate the importance of woman's right.
- 4- Because the holly lawgiver not determine the upper limit for dowry which is some kind of exchange in marriage and in every exchange each exchanger are allowed to determine any amount for dowry.
- 5- Dowry payment issue is consisted of such robustness which after getting married and before receive her dowry wife can prohibit to intercommunicate and she can also prohibit to bedfellow with her husband as long as he pays her dowry and even some jurists like Imam Khomeini believed that insolvency and weakness is not the cause for liquidation of the prison right.

To answer the research question we can conclude that determination of upper limit for dowry just wherein the man can pay 110 gold coins and he cannot pay more than that and he also attempt to pay which can be effective in prevent the imprisonment of the man. Whereas the statistics offered, because most of the woman doesn't have the right of divorce, they use the content of the prison right otherwise most of their man doesn't have even the ability of feeding their family, and of course they can't pay fifty coins even though the one hundred and ten coins.

Conclusion:

Dowry is the minimum guarantee for living either during the marriage orduring the divorce. Dowry is the woman's right and this is why God created nature of the woman like this.

In Islam, though the law does not consider any specified quantity for dowry and according to some evidence, high dowry is considered as the financial strength of people and common customs requirements; But about its moderation there are several ethical advice; Islam commented on dowry in order to raise the ethical dimension and increasing the dowry in practice is contrary to human dignity.

The dowry in Iran is symbol of lack of required confidence in society where in marriage; the economic security of the wife depends on man who has more freedom to leave unhappy marriage. Women's freedom to leave an unhappy marriage is more dependent on the will and desire of man, and there are more jurisprudential and legal constraints. Even the in divorce, woman must forgive some or all of its rights to divorce from her husband, still the man's consent is required!

In addition to jurisprudential and legal factors, the lack of an effective economic and Welfare system must be added. System that gives women the confidence which after separation, will not burden of economic, social and psychological lonely. Increasing dowries only represent lower marriage economic security rate. It is a manifestation of in efficiency of policy advice and policy imperative, Irresponsible and non-expert as a part of the ruling class, religion, politics and management who wants to speak with literature of the past century with modern society and he was invited to tolerance and patient and invisible and unknown personal comfort in face of adversity and storms of life and in the other way, regard less of the surrounding community, wants to impose unreasonable restrictions, to provide and enhance people survival and this secret is all the crisis that the families who have daughters use the dowry as a means of reducing the security and in against, the men do not marry to escape such boundaries and they do other conventional and traditional way and the situation is such that there is

One of the most important issues which considered about high dowry is that mutual confidence has been reduced in society. In fact, determination of high dowry is the sign of suspicion to mutual in society. However, a little reflection is obtained at the output of the Family Courts which such predictions could not also be instrumental in creating hope and happiness indivorced women, because of the high dowry may be could prevent or delay of couple's divorce, but this kind of life without any love, trust and intimacy is worseth and divorce, while with insolvency law, the couple is completely freed from paying the dowry and even insplitdowry, the man's ability to pay is important so the dowry for woman is ridiculous; so she fed up and said I want the divorce instead of receive her dowry. Another reason for much amount of dowry is the manner of credit and commitment and not considering it as a duty provides by man, usually the obligation to pay a right such as divorce is not felt expect when it is necessary; also overcome the economic mood and profit-seeking attitudes and updated computations are other reasons in the increasing amount of dowry. Some the ories said that the reason of high amount of dowry is failure to pay the women's rights such as alimony, inheritance and domestic fees.

But Legislator to avoid all the problems which mentioned above and in order to limit dowry with adoption of Article 22 of the Family Protection Act attempted to determine the upper limit of dowry which according to the reasons given in Quran and narratives it has no place and even it's against to the rules contained in civil laws because all parties according to the dowry are agree to compromise, and now here is evidence indicating the upper limit for dowry.

So Determination of the upper limit for the dowry is contrary to the natural rights of women, which GOD has given to them; it has legal and non-legal bugs and on the other hand, It is not pay attention to the main cause of divorce and its high cost in society, and also that is inconsistent with a number of other acts which adopted after the and it is considered one of the country's legislative achievements, if those involved in drafting the directive and governor, are really worried about the Imprisonment Of men for not paying the women's dowry, rather than seek ways to stop demanding dowry from wife, It is better to be representation of the imprisoned men, for paying the women's rights and With the guarantees an necessary legal mechanisms for Providing demand their rights, which is the same as reward in practice.

REFERENCES

- Abazary, Foomeshi, Mansour, 2001. Practical method of investigating the claims of family()- Dowry and it nature, Kamalan Publication.
- Ameli, Hor, 1412. Lunar Hegira, Mohammed bin Hassan, the guidance of the provisions of the imams side issues, skin 7, the scenery, the Islamic Research Academy, first .
- Ameli, Shams Aldin Mohammad ebn Moki, 1994. Lame Dameshghiye, Ali Shervani Translator, Second Vol., Qom, Darafekr.
- Asadi-Seyed Hassan, 2002. Woman's right, Tehran, Mizan Publication.
- Clini, Abu Jaafar, Mohammed, son of Jacob, 1407. Lunar Hegira , sufficient (i - Islamic), 5 skin, Tehran, Dar Islamic books .
- Club Reporters, Date: 22th Esfand, News code: 40825.
- Darmazari, Mohammad Reza, 2010. Dowry (The guidance of Operational and Practical methods of claim of dowry in justice courts and enrollment case, Tehran, Kalak Simin Publication)
- Dehkhoda, Ali Akbar, 1994. Hedkhoda Dictionary, Vol.1, Tehran, Tehran University.
- Dinvari, ebn qatibe, 2001. Political and Emami (Kholafa history), translated by Naser Tabatabaee, Tehran, Ghoghnoos Publication.
- Esmaili, Mahnaz, 2001. Philosophy of dowry from law and jurisprudence perspective, Tehran, University Jahad Publication.
- Fahimi, Fateme, Vahdati, Shobeiri, Hassan, 2009. Woman and financial rights (Matching study in Islam law, Iran and elimination of discrimination of woman convention), Tehran, Khorsandi Publication, First Edition.
- Haji Parvane, Mohammad Mehdi, Dowry and it levels of juridical and legal, Family rights and Qanon, Electronica books www.irpdf.com
- Hamidian, Hassan, 2005. Set of articles about Family's rights, Tehran, Hamoon Publication.
- Holi, Miqdad bin Abdullah Soiree, bita, treasure gratitude in the jurisprudence of the Koran, Skin 2, interpreter Boukhaichy, Abdul Rahim Akiki, Qom, first Edition.
- His Ibn Abbad, 1414. Lunar Hegira, sufficient Competence, Ismail Ibn Abbad, the ocean in the language, Beirut-Lebanon, the book world .
- Holy Quran Translated and interpreted jurists Elahi Qosheee, Tehran, Norouz khan, Salehi Publication.
- Imami, Seyed Hassan, 1994. Civil rights, Volume IV, Islamic Bookstore, Eleventh Edition.
- Isfahani , both houses of the Dom , Mohammed Baqir bin Mohammed Taqi , (1404) Lunar Hegira , mirror minds to explain each news Apostle, skin 20 , Tehran , Dar Islamic books .
- Isfahani, both houses of the first, Mohammad Taqi, 1406. Lunar Hegira, the pious kindergarten to explain those who do not attend the jurist, leather 8, Qom, Kohanbur Cultural and Islamic Institute.
- Jafari Langaroodi, Mohammad Jafar, 201, set of civil law, Tehran: Ganj danesh Library, First Edition.
- Jaziri, Abdul Rahman , 1980 AD, jurisprudence on the doctrine four skin 4 , Beirut , Arab ketab, Third Edition .
- Johari, Esmaeil son of Hemad, 1410. Hijira, Alsahah- Taj Allqr and Sahah Alarabic, Beibut- Lebanon, ar alelm lel melaeen.
- Johari, Ismail bin Hammad, 1410. Lunar Hegira, Asahah-Taj Arabic language and Sanitation , Beirut-Lebanon, Dar El Ilm.
- Law of family protection, 201. The preparation of development assistance, Revision and publish rules and regulations, deputy Publisher Revision and publish rules and regulations, First Edition.
- Majlesi, Mohammad Baqer, (1410 Hijira), Beharanvar, 100: Beirut, Lebanon, Tab and Nashi Institute.
- Nouri, an updated, Mirza Hussain, 1408. Lunar Hegira, inferred means and derived issues, skin 15, Beirut Lebanon, its founder, Al -Bayt .

- Pak Nejad, Seyed Reza, Marriage is the academy of Human ology, Qom, Akhlaq Publication, third Edition.
- Pooladi,Ebrahim, 2009. Dowry adjustment, Dadgostar Publication, Second Edition.
- Qomi, truthful, Mohammed bin Ali bin papal, do not attend Faqih, 141. Lunar Hegira, 1 skin, then, an Islamic book spreads and Abesth by the University teachers Hauza scientific Qom.
- Qorshi, Seyed Ali Akbar, (1412 Hirija), Ghamoos Quran, 7: Tehran, Darakotobe Eslamiye, Tehran, Iran.
- Raqeb, Esfehni, 198. Mofradat fie Qarib Alqoran, 1: Tehran,Book Publication,(Zil Mehr).
- Sharafdin, Hossein, 2012. Sociology of dowry, Imam Khomeini Publication.
- Some of researchers with attention of Shahroodi, Seyed Mahmood Hashemi, 1426.Hijira, Jurist culture according to religion, Vol. 1, Qom, Islamic Jurist on religion encyclopedia Institute.
- Tehran Today Newspaper, Date: 22 Esfand, 2012. News Code: 40825.
- Tehran Today, Date: 17th Esfand, 2001. News Code: 2169.