Legal nature of dowry on the death of Couples

Morad MAGHSOUDI1*, Mohammad Hossein GHAEMMAGHAM FARAHANI2

1Ph.D.student of private law, Department of private law, college of law and political science, science and Research Branch, Islamic azad university, Tehran, Iran.

2Associate professor, Department of private law, college of law and political science, science and Research Branch, Islamic azad university, Tehran, Iran.

Received: 22.03.2015; Accepted: 29.05.2015

Abstract. One of the cases related to family law is the demand of dowry, and usually such dowry is usually known and defined by one of the couples, while in considering such demand, difficulty is that before the intercourse, if one of the couples die and the other whether the heirs or the husband demand the dowry, is the total dowry paid? Or like divorce, half of the dowry is going to be paid? In contrary to temporary marriage, our legislative has not expressed the issue mandate in permanent marriage. So we are going to find a legal jurisprudence answer to this question in this paper.

Keywords: Marriage, dowry, couple death, Divorce

INTRODUCTION

Preface:

One of the debatable legal major issues in family law is dowry and this issue that requires legal analysis and research and is always the subject of courts is that what is going to be done with the dowry by the death of one member either wife or husband in permanent marriage? In other words, is the death of one going to bisection the dowry or wife or her heirs are entitled to the entire dowry?

The question is raised, because the legislator in Article 1096 of the Civil Code has expressed the issue on temporary marriage, But has explained nothing about permanent marriage and this legislature's silence has made controversy in inferring the law in expressing it, and What is intensifying this debate is the sentence in Article 1092 of the Civil Code is about the divorce before marriage.

Article 1092 of the Civil Code: “If a husband divorces his wife before the intercourse, she would be entitled to half of dowry, and if the husband had paid more than half of the dowry before, has the right to extradite the same amount.

According to the Legislative silence about the expression of the sentence in accordance with Article 167 of the constitution, the court Magistrate is forced to refer the Islamic sources and authentic fatwa, but by looking at these sources also it can be found out that these controversies are also present there, in this article, the author studied some parts and Finally in accordance with its terms and my opinions this issue would be concluded by studying the legal opinions and judicial procedures.

1st. Woman Possession on their dowry and its maintenance factors:

* Corresponding author. Email: mmaghsoudi1@gmail.com

Special Issue: Technological Advances of Engineering Sciences

http://dergi.cumhuriyet.edu.tr/ojs/index.php/fenbilimleri ©2015 Faculty of Science, Cumhuriyet University
Famous jurists believe that as the woman marries she has the possession of her dowry and can make any changes to it. Even if she has not received it. But others believe that the woman possesses half of dowry with marriage, and will be the owner of second half with deference or other factors such as (husband apostasy or death).

Results of these two ideas results in woman Possession of dowry before intercourse and other factors, but because that is not our main studied point and also has been expressed by Civil law in 1082 following the famous jurists idea, we do not follow or focus on it.

But what helps our topic and its explanation is the answer to this question that what are the dowry possession requirements?

To answer the question, it has been said that some factors which makes the woman have the dowry possession (after permanent marriage) such as: 1. Intercourse 2. Husband apostasy 3. Death

Among the three cases, those that are related to the subject matter is the Couples death which is going to be studied.

2nd. Death of wife or husband

A – Opinions of religious scholars:

About the death of wife or husband after intercourse, there is no doubt on the possession of entire dowry by the woman, because, as it was mentioned before, one of the factors to possess the dowry is having intercourse. But about the death of one spouses before the intercourse, there is disagreements between the great jurists, some of them state that the death of one of them before intercourse makes the entire possession available to woman but some disagree and state that it should be into taken into account as of divorce before having intercourse, so the dowry would be halved.

1 – The opinion of the jurists who believe that the death of one makes the entire possession available to the other.

Most of Imami jurists believe that if the husband or wife die before the intercourse, wife will benefit from all dowry.(Mohaqeq Damad, 1997, pp. 235 - 236, according to the rituals of Islam, pp. 618 – Sharhe Lam’e (description-brightness), old prints, vol. 2, p. 100).

According to Ibn Idris (RA) the correct one is that by the death of husband or wife each can benefit all dowries, whether or not intercourse is done. Saheb Hadaegh writes that Sheikh Mofid also has the same idea. The scholar knows Ibn Idris idea as a strong one.(Mirshamsi, 2001, p. 55, quoted by Hadaegh Alnazrh vol 24, p 549 Valsrayer, p. 431).

Saheb Hadaeq also knows this idea as the correct one and has supported his ideas by reasons, he says, we know that due to marriage the woman can benefit all dowry, and it would be halved with divorce, but death is different from divorce, when believe in something, we have to have reasons for rejecting it, and about the mentioned case, we have no consensus or news about the event, and religion scholars about this issue is the same, so it is only reasonable to obey what we believe in (the same source, same page & 56, quoted by Hadaegh Alnazereh, vol 24, p 549) . SahebJavaher also claims that the total dowry is possessed by one partner with the death of one and before intercourse (ibid, p. 56, quoted by Javaher Kalam, vol 30, p. 48) also Mohaqeq Qummi believe in the total dowry in Jame-al-Shatat .(Katouzian, 2003, vol. 1, p. 163, quoted by Mohaqeq Qummi, Jame-al-Shatat .p. 425).
Legal nature of dowry on the death of Couples

Among the contemporary scholars, Muhammad Ali Araki (RA) - Mohamed Fazel lankarani (RA) Lotfollah Safi Gulpaygani and Naser Makaremshirazi believe that in case of any partner’s death, woman deserves all dowry.

Question, if one partner is died before the intercourse and after setting the dowry! Please specify:

A-In case of husband death, is the wife entitled to dowry?
B-In case of wife death, what is the rule?

Ayatollah Safi Gulpaygani:
"In my opinion, both couples are entitled to the total dowry. Alah-ol-A’lam - 20 / Shawwal –Al-molkarem / 1420.(Collection of judicial legal opinions on legal matters, 2002, Vol. IV Marriage 2, pp. 56 and 57).

Ayatollah Makarem Shirazi:
A – wife is entitled to the total dowry.
B – There is no difference and dowry is her inheritance property, the husband always takes his share of that. Good luck. 10/02/78 ".(Ibid, p. 57).

Question: A couple are married and man dies before intercourse, is her dowry complete or halved?

Ayatollah Mohammad Ali Araki (RA)
"Her Dowry is complete." (Ibid., Pp. 49 and 50)

Question, if one of the spouses dies before the intercourse, should the complete or half dowry be paid to woman?

Ayatollah Mohammad Ali Araki (RA):
"In the issue of man or woman’s death the complete dowry have to be paid and halving the dowry is dedicated to divorce."(Ibid., P. 50).

Question: If a woman set herself in fire, after marriage and before intercourse, will she be dedicated the full or half dowry?


2 – Religious scholars view who agree on bisection of dowry in the case of one partner death:

Mohammad Mujahid, Manahel, Marriage Book – Seid Ali Tabatabai, Riyaz, V. 2 – Marriage, believe if the marriage is happened before the intercourse, woman deserves no more than half of the marriage dowry. (Katouzian - the same page)

Ayatollah Khoei (ra) said:
"The total dowry is dedicated to woman with the marriage, and is halved before the marriage by one of the couple death or divorce, apparently near a half before it lapses." (Mirshamsy, ibid., P. 56, quoted by Menhaj Al salehin, vol. 2, p. 279).

Ayatollah Imam Khomeini (RA):
"If one of the partners dies before the intercourse, as in the case of divorce, the dowry should be halved, especially in the case that the woman dies and the man in alive, but it is better that there
is a compromise between them, especially if the husband dies" (Khomeini (ra), 2004, vol. 4, p. 96).

In response to earlier questions, the responses of some religious scholars are as follows.

**Ayatollah Ali Javad Tabrizi:**
"In case of the one partner death before intercourse, the dowry is halved, but caution is that in case of death of husband, wife and the husband heirs in the amount of dowry compromise for it to be the total or half." (Judicial legal opinions on legal matters, ibid., P 56).

**Ayatollah Sayyed Ali Khamenei:**
A - If the husband dies before the intercourse, the dowry is halved but it is better to have Compromise.
B - The same as the answer to A. God knows (ibid., same page).

**Ayatollah Mousavi Ardabil:**
A - Wife is entitled to half of dowry.
B - Half of the dowry is entitled to the wife heirs (ibid, p. 57)

3 – The opinions of those religion scholars that have distinguished between wide and husband:

Sheikh Tusi stated in Nahaye:
"When a man dies, it is essential that his heirs give all women dowry to her, and it is recommended to woman not to accept half of the dowry, but if the woman dies, half of the woman dowry is entitled (Mirshamsi, same, p. 55).

**B - Legal scholars’ opinions:**

1 – The idea of Dr. Seyed Hasan Imami:
"If one of the spouses dies, the marriage is canceled and the woman asks her dowry, whether the intercourse was done or no. Because woman is entitled to dowry by marriage and the husband death won’t change the situation, returning half of the dowry at the time of divorce before having intercourse is in contrary to the article 1092 Q.M. "(Imami, 1994, vol. 4, p. 417).

2 – The opinion of Dr. Asadolah Imami and Hossein Safaei:
Death of husband has no effect on dowry, and if the dowry is not paid during the life of husband, the wife can claim all of it after his death, because woman is entitled to dowry by marriage and nothing can cancel this or part of this right. Article 1092 of the Civil Code that is related to divorce is a special rule and should not be expanded to death”. (Imami & Safai, 2003, p. 167).

Dr. Katouzian and Dr. Mohaqeq Damad also have studied the quotations on two aspects and have expressed their opinions clearly.
C - The legal notions and judicial procedures:

1 - Legal notions:

The Legal Department of the Judiciary is questioned: if the husband dies before the intercourse and after setting the dowry, is the wife entitled to all of half of the dowry? The question was answered through an advisory opinion of 7/7800, on January 16, 2000: The rule of the one of the couple's death is not mentioned in the civil law. (The collection of judicial legal opinions on law affairs, ibid., P 57)

In one of the judicial meetings, a question was asked:
If one of the couples dies after marriage and before intercourse, is the woman entitled full or half of the dowry? In this Meeting, the majority of the judicial colleagues believed in entitling the whole dowry and minority of them believed in half of dowry. And the examining Commission opinion on this issue in order to confirm the majority of opinions is As follows: As it is stated in the majority opinion, with the implications of Article 1082 of the Civil Code when the marriage happens, the woman possesses her dowry and has the right the right to change it. If the dowry is not paid to woman, it is an obligation issue which the man has to do. And if the man dies before the intercourse, and there is no special rule on the reduction of dowry or bisection about the husband death before intercourse, and the only exception is the general rule contained in Article 1082 of the Civil Code, the provisions of Article 1092, in which In cases of divorce before intercourse the legislator entitles the woman to half of the dowry, and the legislator rule in special cases cannot be extended without legal basis to other cases. (Collection of Judicial Conferences, 2007, vol. 1, pp. 469 and 470).

2 - Judicial procedure:

an example of Law Public court verdict No. 977 dated 12.28.85

Court verdict

About the Petition of Mr. P.A. On behalf of claimants: 1 - M. N. 2 – SH. K. the heirs of F.N. on Mr. M. A. and the lawyer MR. M.H. on demanding 400 gold coins (New design) with this explanation of that lawyer of claimants claimed that the deceased F.N. was the permanent wife of claimant and is died. And the wanted person’s dowry in her lifetime consisted of 400 Gold Coin, and because her clients were heirs, they presented a petition calling to sentence the wanted to pay 400 gold coins and court money. The court has had considered some issues such as: Determining the relationship between defendant and Mrs. F.N. Based on the copy of the marriage document attached to the Petition paper and knowing the heirs relationship between the defendants and Mrs. F.N., The inheritance certificate is attached to the file and they had considered this issue that according to the defendant's lawyer, and according to the submitted bill, he did not pay her dowry. And Whereas according to the Article 913 of the Civil Code the defendant is known as F. N. heirs and half of the dowry belongs to him, the court accepted the defendant demand on 200 gold coins, and according to articles 906 and 1082 of the Civil Code and also 198 and 515 and 519 of the Procedure Code in Public and Revolutionary Courts in civil code affairs sentenced the defendant to the delivery of 200 gold coins to the claimants, one-sixth of the coins belong to the second claimant and the rest to the first claimant. About all the cost, 31000 rials should be paid for Litigation costs and 5000000 rials for Honorarium, and all are issued on the right of claimants, and about the rest that is 200 gold coins of defendant, the court considering articles 300 and 913 of civil code, issues a rule in which it define that claimants have no right, the verdict issued is revisable within twenty days after the notification deadline in the appeal courts of Ilam.
The manager of the Legal General Court of Dareshahr (T)

Due to the lack of objection to the verdict, the mentioned verdict seems to be confirmed, and the convicted person give the convicted installments Petition to the court, and the court according to the petition No. 163 dated May 30, 2007 issued an installments verdict for the defendant to pay Monthly three coins, and that verdict is objected by the claimants and in the reconsideration court of Ilam it would be examined again, and another petition No. 780 dated October 31, 2007 is issued, in which the reconsideration court mention the right of both parties about dowry.

**Court verdict**

About the reconsideration judgment of Mr. M.A. about judgment No. 163, dated May 30, 2007, issued form first branch of legal public court of Dareshahr, in which the defendant is vindicated to pay three coins Monthly and cost of 500000 rials, without considering that reconsideration of defendants as the heirs get their own share of dowry, and the issue of installments of husbands share is referred to in article 913 of civil code but is not determined, and all 200 gold coins were entitled to the deceased parents, husband on the amount of his own share is the owner of his possessions, from this point of view the installments judgment has legal objection and problem. Due to the problem that the defendant cannot afford to pay three coins monthly, the court decreased this amount to one coin monthly. Therefore reconsideration court confirms the revision petition of defendant. This is the final vote.

Members of the first branch of reconsideration court, Ilam
Advisor of the court: J – A Magistrate: 18
After restoring the file from reconsideration court to the court, judge who issued the verdict has written on the petition No. 977, in a statement addressing the judges of reconsideration court in first branch:
First- the appeal 977 has not been reconsidered and it is not clear why you have stated your opinion.
Second – your bias opinion which is totally is causing the pessimism of parties so be kind enough to amend the vote text so that the sentenced person does not feel his right has not been taken into consideration.

**Members of the reconsideration Court in first branch had the following comments:**

Dear Colleague, Mr. (T) the President of the General Court in Dareshahr

According to the letter sent and attached to the file, it should be mentioned that regardless of the objective terms in this branch petition and it is not considered in as a verdict, the Members of this Court believe that with respect to that there is nothing mentioned about the wife death before intercourse in the civil codes, and so the famous theory of Shiite scholars, should be taken into account, also according to the Article 3 of the Civil Procedure Code that in the absence of law or fatwas one is allowed to cite and issue credible sources of Islamic law. Because on the above theory, Imam Khomeini, Ayatollah Khamenei and other great scholars who had been talked about clearly stated half of the dowry in case of woman’s death before intercourse, and Accordingly the judges in this branch have announced their votes, then according to the revision petition of defendant, and Reliable information Ms. F.T. had no intercourse before death, and based on the mentioned opinions the dowry will be decreased to half (200 gold coins) that one hundred coins in terms of ownership belongs to the husband and 100 gold coins are considered the inheritance of the girl parents.
Legal nature of dowry on the death of Couples

Member of fist branch of reconsideration court

Counselor: J.A.  Judge: a

Review and investigation of the issued votes:

1 – The first Court did not mention the heirs relationship which were confined to the woman parents in the petition, and it has just stated that (court ... has identified the inheritance relationship between the parties and F. N,) it would be better if the court identified this through Probate and also in determining their share of Probate and the number of Probate.

2 – The First Court had offered some information about the time of death and whether the death was before the intercourse, this issue was provided just in reconsideration court and due to the court belief on the woman entitlements of 400 gold coins, it is not clear whether this is according to the dowry before or after the intercourse.

3 – About the relationship between the man and woman, The Court has just relied on the marriage document without setting the number and the issuing place.

4 – The Judge issuing the judgment, have introduced himself as the chief of the first branch of public courts in Dareshar, and this is while this city has only one legal branch, and the chief post is assigned to one branch.

5 - The first branch of the reconsideration Court in the case that has been Case of insolvency, has commented on the subject of the dowry, but the main subject was installments, the court ‘d better not to enter into this discussion and in this case the first court warning to reconsideration Court seemed logical.

6 - The reconsideration Court believed in halving the dowry in the case of death before intercourse, and later supported their ideas with some religious scholars opinions but as it was mentioned, there is different ideas among the jurists if we want to consider these views, we Ought to consider the most credible one that is the entitlement of entire dowry with death because the bisection of dowry is inconsistent with the civil codes and article 1082 taken from the credible opinion.

7 – The first court, requested the reconsideration court to revise the final vote and this demand is not consistent with the objection and revision methods.

CONCLUSION

According to what has been said, it can be considered that there is no legal rule about the case of death of one of the couples before intercourse in the civil codes, and Article 1082 of Civil Code that represents the ownership of total dowry while the woman is married, is not able enough to establish an obligatory position for the husband toward woman dowry and the judge that is forced to refer to the ideas of religious scholars are also faced with conflicting views and these discrepancies have made difficulty between the judicial procedures that are necessary for the justice to solve the problems and apply faith, and also Enact a clear rule about this issue, so that we are faced with the flood of votes, or it the Board of the Supreme Court (which has its own terms) issues a unite vote to resolve the problem, and finally it should be noted that according to current situation and the article 1082 of civil code and that the constitution stipulated in Article 1092 is an exceptional rule and is related to divorce and cannot be applicable to the deceased couple cases, the author Believes that the whole dowry should be entitled to the woman with the
death before the intercourse, in which the wife can claim all the dowry, and in case of woman death, the heirs according to the legal regulations can claim their share of dowry.

REFERENCES

[8] Collection of legal opinions Justice (Legal Affairs), fourth ed. marriage, Qom, Deputy of Education and Research Center for the Judiciary jurisprudence - first published in 2002