The Provision of Dowry in Iranian Civil Law According to Imamiyah School

Abstract

In Iranian wedding tradition, the dowry (mahr) is not paid upfront as done in Arab culture, and there is no set deadline for its payment. The regulations regarding dowry in Iran are outlined in the Civil Code of the Islamic Republic of Iran, which states that anything that can be considered property, owned, and controlled can be designated as dowry. In the subsequent article, it is explained that dowry can be entirely or partially deferred. This article aims to elucidate the concept of deferred dowry in Iranian civil law from the perspective of Imamiyah School, which is the predominant school of thought in Iran. This study is conducted through a literature review with a normative approach. The research findings reveal that items eligible to be considered as dowry are those with an associated market value, in alignment with the principles of the Imamiyah school. Deferred dowry is permitted within the Imamiyah school, but when the husband is incapable of paying the dowry, the wife is allowed to make a decision to abstain from conjugal relations with him. This, however, cannot be used as a reason for divorce. In Iran, there exists a phenomenon known as “mahar prisoner” for husbands who fail to pay the dowry in full after marriage.

Keywords: Dowry, Iranian Civil Law, Imamiyah

Introduction

Marriage is an event of significant value in human life. When a man and a woman marry each other, various consequences, both physical and emotional, arise as a result. Within marriage, there is a special privilege granted to the wife, known as “mahar.” Mahar is a term commonly used to refer to money, gifts, items, or property given to the wife by the husband when they get married. In Islamic marriage, the giving of mahar by the groom to the prospective bride aims to elevate the dignity of women and provide an explanation that the marriage contract holds a noble position.

In the tradition of Iranian weddings, the mahar is not paid upfront, as is done in Arab culture, and there is no set deadline established for its payment. The regulations concerning mahar in Iran are outlined in the Civil Code of the Islamic Republic of Iran, which states that anything that can be considered property, owned, and controlled can be designated as mahar. In the subsequent article, it is explained that mahar can be fully or partially deferred.

The current laws of the Islamic Republic of Iran are based on several sources, namely Sharia, customs, the constitution, and the principles of the Iranian Islamic Revolution. The state of Iran...
follows the Imamiyah fiqh in establishing its laws. This writing focuses on the analysis of the dowry regulations in Iran, providing a more in-depth explanation regarding the items that can be considered as dowry and the deferred dowry according to the Imamiyah school of thought.

The study of dowry in Iran has reached the discussion of legal practices, jurisprudential aspects, and legal regulations. The study conducted by Farzanegan and Gholipour,7 Ali et al.,8 Hashemi and Esmaeili,9 Akbari and Afsar,10 Jaffari, golshani, and karimi,11 Pezeshki, Hoseyni, and Nazemi,12 Panah, Omidi and Karimi13 discusses the legal practice of dowry in Iran.

Furthermore, regarding the jurisprudence of dowry in Iran, research is conducted by Fard, Babukani, and Heidari14, Marandi and Rahmani.15 A research conducted by Hossein, Fatemeh and Aliakbar,16 A study conducted by has examined the legal regulations concerning dowry in Iran, by comparing the similarities and differences in dowry payments based on the prevailing exchange rates in Iranian and Egyptian law. In Iran, the concept of dowry is grounded in Imami jurisprudence, while in Egypt, it follows the Hanafi jurisprudence. Within the context of Iranian law, several types of dowry are mentioned, including Mehr, al-Masami, Mehr al-Mathi, and Mehr al-Mutah. However, in Egyptian law, Mut'ah is not categorized as dowry, but rather as a gift given by the couple.

The upcoming research will differ from the previous study. This research will focus on issues that have not been deeply explored in previous studies, namely the types of items allowed as dowry and the deferred payment of dowry within the context of the Imamiyah school of thought. The approach to be used in this research is a normative approach, where it will refer to the principles of fiqh (Islamic law) within the Imamiyah school of thought regarding the provisions of dowry. The discussion in this article encompasses an overview of the Civil Code of Iran, the provisions of dowry in the Imamiyah school of thought, as well as an analysis of the provisions of dowry in the Civil Code of Iran in relation to the Imamiyah school of thought.

7 Mohammad Reza Farzanegan and Hassan F. Gholipour, “Divorce and Gold Coins: A Case Study of Iran” (Munich, 2017).
Dowry in the Civil Code of Iran

Iranian law encompasses materials sourced from Islamic law and has been influenced by European laws. Iranian culture has undergone exchanges and changes that have adopted Western lifestyles. After the success of the Iranian Revolution, the new leadership declared that the law in the Islamic Republic of Iran would be based on Islamic Sharia as the primary source.

Since the Islamic Revolution in 1979 led by Ayatollah Khomeini, Iran has undergone significant changes in its politics, becoming an Islamic Republic that adopts the “Guardianship of the Jurist” system of governance. In the political context, Iran possesses unique characteristics with a thought and political system grounded in Islamic values and led by religious scholars (mullahs). The concept of the “Guardianship of the Jurist” is a result of political ijtihad proposed by Ayatollah Khomeini, rooted in the Imamate doctrine within the tradition of Twelver Shia Islam.

Ayatollah Khomeini was a Shia figure deeply concerned about unity between Sunni and Shia. In October 1979, he issued a fatwa encouraging Shia followers to overcome their hesitancy in praying behind Sunni imams. He made efforts to promote unity and harmony between the two groups. In his view, unity between Sunni and Shia, as well as between the government and the people, had been realized in Iran.

In Iran, legislation related to civil, criminal, financial, economic, administrative, cultural, military, and political matters must be in accordance with Islamic law. Recognized sources of law in the country include Islamic law, the constitution, customs, and the principles of the Iranian Islamic Revolution. This principle emphasizes the importance of alignment between legal regulations and the principles of Islamic religion, the constitution, customary traditions, and the values underlying the Islamic Revolution in Iran.

Efforts to codify Islamic law in Iran began early on. Initially, family law in Iran was regulated as a part of civil law, which was formulated and enacted between 1928 and 1935. In 1927, the Minister of Justice of Iran established a commission to draft civil law. Certain provisions unrelated to family and inheritance law were drawn from the Napoleonic Code, as long as they didn’t conflict with Sharia law. However, matters concerning family and inheritance law primarily aimed at unifying and codifying Sharia law. The law draft prepared by this commission was subsequently adopted in three stages between 1924 and 1928, and is known as Qanun Madani (Civil Code).

After family law was regulated in Chapter VII of the Civil Code of 1935, several reforms took place in the following years. In 1931, separate legislation specifically addressing marriage and divorce was enacted. Furthermore, in 1937 and 1928, there were also laws regulating various aspects of marriage and divorce. This indicates ongoing efforts to develop and improve legal regulations related to family matters, particularly in the context of marriage and divorce in Iran.

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18 Daud and Rosadi, “Dinamika Hukum Keluarga Islam Dan Isu Gender Di Iran: Antara Pemikiran Elit Sekuler Dan Ulama Islam.”
19 ICRO.
21 Daud and Rosadi, “Dinamika Hukum Keluarga Islam Dan Isu Gender Di Iran: Antara Pemikiran Elit Sekuler Dan Ulama Islam.”
22 Daud and Rosadi.
23 Daud and Rosadi.
The provisions regarding dowry are officially stipulated in the civil law, “The Code Civil of the Islamic Republic of Iran.” They are found in Chapter VII, Articles 1078 to 1101. In this article, we will discuss Articles 1078 to 1083:

Article 1078 - Anything which can be called property and which can be owned and possessed can be designated as a marriage portion.

Article 1079 - The marriage portion must be known to the marrying parties to the extent that their ignorance is removed.

Article 1080 - Fixing of the amount of marriage portion depends upon the mutual consent of the marrying parties.

Article 1081 - If a condition is laid in the marriage act that if the marriage portion is not paid within a fixed period that marriage will be cancelled, the marriage and the marriage portion will remain binding and authentic but the condition will be null and void.

Article 1082 - Immediately after the performance of the marriage ceremony the wife becomes the owner of the marriage portion and can dispose of it in any way and manner that she may like.

Article 1083 - A duration of time or instalments can be fixed for the payment of the marriage portion, as a whole or in parts.

The Provisions of Dowry in the Imamiyah School of Thought.

Dowry is one of the rights of the wife that is based on the Book of Allah (the Quran), the Sunnah of the Prophet, and the consensus of the Muslim community. There are two types of dowry: mahar musamma and mahar mitsil. mahar musamma refers to a dowry that has been agreed upon by the groom and the bride, and its amount is clearly mentioned in the marriage contract’s wording.

In Iranian law, “mahar musamma” is equivalent to “mahr al-masmi,” which refers to a specific amount of property determined by agreement as the dowry by the couple or a person chosen by the prospective husband and wife.

In the Imamiyah school of thought, there is no minimum limit for the dowry. Anything that holds value in a commercial context can be used as a dowry, even if it’s as little as one qirsh. The dowry can take the form of money, jewelry, household items, animals, services, commercial goods, or other items with value. However, the requirement is that the dowry must be clearly and specifically known, for instance, a hundred lire or in a more general form like a piece of gold or a sack of wheat.

The scholars of the Imamiyah school of thought unanimously agree that in the case of mahar musamma (specified dowry) consisting of items that are not permissible or lawful according to Islamic law, such as alcoholic beverages (khamr), pork, carrion, or other items that cannot be lawfully possessed, the marriage contract remains valid. In such a situation, the wife is entitled to a mitsil dowry (equivalent compensation) with a corresponding value. Some scholars of the Imamiyah school set limits regarding the wife’s right to the mitsil dowry when there is a mixture with the mahar

25 Hossein, Fatemeh, and Aliakbar, “Examining the Conditions of Dowry and Its Payment Based on Current Rate in Iranian and Egyptian Laws.”
26 Mughniyah.
musamma. However, there are also scholars in the Imamiyah school who agree with the four other major schools of thought, which allow the wife’s right to the mitsil dowry without limitations.27

If the mahar musamma consists of seized or appropriated goods, for example, if the husband gives dowry in the form of household items that belong to his father or someone else, according to the Imamiyah school of thought, the marriage contract remains valid. However, in the case of such dowry, if the owner of the property gives it as dowry, then the property becomes mahar musamma. But if the owner of the property does not give it, the wife is entitled to receive compensation in the form of the same property. This is because, in cases like this, the mahar musamma is a valid item to possess, but its invalidity lies in the aspect of valuation or determination of its value. This is different from items like khamr (alcoholic beverages) and pork, where both of these items are not permissible to possess.28

Regarding the mitsil dowry, there are several situations that apply to it, namely:

1. The dowry is not considered one of the essential elements of the marriage contract, similar to a commercial transaction. Instead, it is a consequence of the marriage contract itself. Therefore, a marriage contract can be established without explicitly mentioning the dowry. If there is a mixture of assets, the mitsil dowry will be determined. If the wife is divorced before the assets are mixed, she does not have the right to the dowry, but she must be given mut’ah, which is a voluntary gift from the husband, such as clothing, a ring, or other items. If both parties agree to this gift, it becomes mut’ah. According to the Imamiyah school of thought, there is no obligation to pay the dowry if one of the spouses dies before the mixture of assets occurs.29

2. If a man marries a woman with the condition of not mentioning the dowry, according to the consensus of most schools of thought except the Maliki school, the marriage contract is considered valid. The majority of scholars in the Imamiyah school of thought believe that the man must still give something as a dowry, regardless of whether the amount is small or large. If a contract is deemed “fasid” (void) and mentions a specific dowry amount, and then there is a mixture of assets, if the mentioned dowry value is greater than the mitsil dowry (the determined value of dowry), the wife’s right is limited to the mitsil dowry, as she is not entitled to receive more than that.30

There is another type of dowry in Iranian law known as Mehr al-Mazl, which is based on custom and determined according to a woman’s appearance, family status, social standing, and so on, in accordance with the requirements of time and place. Mehr al-Mazl is paid in several cases, including:31

1. Because there is no agreement on the dowry during the marriage contract or it is determined that no dowry will be given to the woman; in this case, after consummation, the dowry is established.

2. When a stamp agreement is invalid due to reasons like lack of knowledge or insufficient property; in this case, mehr al-muthl must be paid. When consummation has taken place;

27 Mughniyah.
28 Mughniyah.
29 Mughniyah.
30 Mughniyah.
31 Hossein, Fatemeh, and Aliakbar, “Examining the Conditions of Dowry and Its Payment Based on Current Rate in Iranian and Egyptian Laws.”
in an invalid marriage where the woman is unaware, in this case, mehr muthl must be paid. If the wife is aware, she has committed adultery and is not entitled to any dowry. In this scenario, Iranian law is superior from the perspective of adhering to fundamental regulations and having no predetermined maximum limit.

Deferred Dowry in the Imamiyah School of Thought

Scholars of the school of thought agree that the dowry can be paid either in cash or in the form of a debt, partially or in full, with the condition that the payment details must be known in detail. For instance, a man might say, “I marry you with a dowry of a hundred, where fifty will be paid in cash, while the rest will be paid within one year.” Alternatively, the dowry can be known as a lump sum, with the payment made upon the death of the husband or upon divorce. The Imamiyah school of thought states that if the dowry is mentioned but it’s not specified whether it will be paid in cash or in the form of a debt, then the entire dowry must be paid in cash.³²

The Imamiyah school of thought holds that if the husband is unable to pay the dowry, the wife is not allowed to initiate fasakh (seeking divorce), and the judge is not permitted to issue a divorce decree. In such a situation, the wife only has the right to refuse sexual relations with the husband.³³

Analysis of the Dowry Provisions in Iranian Civil Law According to the Imamiyah School of Thought

The official provisions regarding dowry are regulated in the civil law of the Islamic Republic of Iran, known as The Code Civil. Article 1078 in this law explains that any type of property that can be owned and possessed can be designated as dowry in marriage. According to the perspective of the Imamiyah School of Thought, dowry can take the form of money, jewelry, household items, animals, services, trade goods, or other valuable items. The crucial point is that the dowry must be clearly and specifically known, whether in a specific unit such as a hundred lire or as a whole, like a piece of gold or a sack of wheat. In this context, the Imamiyah School emphasizes that the value of the dowry must be determined specifically and understood clearly by both parties involved in the marriage. In this regard, the articles in Iran’s civil law align with the provisions found in the Imamiyah School’s perspective.

Article 1079 in civil law stipulates that the marriage dowry must be known to both marrying parties until their ignorance is removed. One type of dowry is the specified dowry, which is the dowry agreed upon by the groom and bride and mentioned in the marriage contract. In Iran, this type of dowry is also known as mahr al-masmi. When an agreement is reached, both prospective spouses are aware of the amount of dowry that is part of their marriage. Article 1080 then explains that the determination of the dowry amount depends on the mutual agreement of both parties. Article 1080 further interprets and regulates aspects related to the specified dowry.

Article 1081 explains the requirements when a marriage does not specify a dowry within a certain period. According to this provision, the marriage remains valid, but the stipulation is legally void. In the Imamiyah school of thought, the held view is that the man in such a case should still provide something as a dowry, whether it’s a small or large amount.

³² Mughniyah, Al-Fiqh ‘ala Madzhab Al-Khamsah.
³³ Mughniyah.
Article 1082 clarifies that after marriage, the wife has full ownership of the dowry, and if the dowry is deferred and not in cash, the wife has the right to demand it at any time and in any manner. In the Imamiyah school of thought, deferred dowries are permitted. However, in this context, the wife is not allowed to initiate divorce on the grounds of the dowry not being paid, but she only has the right to refuse sexual relations. Nevertheless, in practice in Iran, there’s a practice of withholding the dowry, where a husband who cannot pay his marriage dowry may face detainment.

In this case, there is a discrepancy between the dowry provisions in Iran and the Imamiyah school of thought. The Imamiyah school allows the wife to refuse marital relations if the dowry has not been paid, but this does not extend to initiating divorce proceedings. However, the practice of dowry detention in Iran does not align with this view.34

Article 1083 regulates the payment schedule of the dowry in installments, whether in full or in part. In the Imamiyah school of thought, if the dowry is mentioned but it’s not specified whether the payment is in cash or deferred, then the dowry must be paid in full and in cash. This means that if there’s no specific agreement regarding installment payments of the dowry, then the payment must be made in full and immediately. This perspective is held by the Imamiyah school.

Conclusion

The provisions regarding the dowry in Iran’s Civil Law, The Code Civil of the Islamic Republic of Iran, can be found in Chapter VII, articles 1078 to 1083. These articles govern the items that can be designated as dowry, which align with the stipulations in the Imamiyah school of thought. In the Imamiyah school, the dowry can take various forms, such as money, jewelry, household items, animals, services, trade goods, or other valuable items.

Regarding the concept of deferred dowry in Iran’s civil law, Article 1082 specifies that after marriage, the wife becomes the full owner of the dowry, and when the dowry is deferred and not paid in cash, the wife has the right to demand it in any manner and at any time. In the Imamiyah school of thought, if the husband is unable to pay the dowry, the wife is only allowed to refuse sexual relations without it being a reason for divorce. However, in practice in Iran, there are cases where wives initiate divorce with the reason being the husband’s failure to fully pay the dowry. Additionally, the practice of detaining husbands who haven’t fully paid their marriage dowries also exists in the country.

Reference


34 Anbari, “Mahar Wanita Iran.. Bayar Atau Penjara.”
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Islamic Republic of Iran. the Civil Code of the Islamic Republic of Iran, issued 1928.


