

EFFECTS OF DISSOLUTION OF THE MARRIAGE COMMITMENT THIRD PARTY REGARDING DOWRY

RoghayehBozorgi¹

Dr.Seyed Mohammad MortazaviLangrodi²

Abstract

Dowry is one of the special effects of marriage that has extensive discussions. About the nature and provisions of dowry, there is so much disagreement among jurists and lawyers. For example, some believe that dowry is a consequential contract but independent of the marriage contract and is classified as commutative contracts. However, it should be noted that due to dowry following marriage, some of the change provisions are not included dowry contract. In Iranian Civil Code, Articles 1078 to 1101 are devoted to the provisions of dowry. With close examination of the opinion of jurists and legal writers, it is understood that in marriage the husband is obliged to give money as dowry to the woman, or take it as a financial obligation. In terms of jurisprudence, there is no solid reason about the fact that dowry must necessarily be from the property of the husband. Therefore, a third person someone other than husband can give his wealth as a dowry, or be obligated to pay it. This obligation may be crystallized in form of a condition in the marriage contract or may be raised as a separate agreement that in both cases, the consent of the third party and the parties to the contract is a basic requirement undoubtedly.

Although in terms of impact, the obligation of the third party to pay the dowry has similarities with when husband is committed to pay the dowry, there are differences in abolition of the marriage and the right to imprison. It should be noted that if the third party sets dowry as obligation on himself, in case of divorce and if the woman is obliged to pay the dowry back (whether half or full), the wife will be responsible to return the dowry to the third party, for the

1-Department of Law, Meymeh Branch, Islamic Azad University, Meymeh, Iran

**2- Faculty Member Department of Law, Meymeh Branch, Islamic Azad University,
Meymeh, Iran**

first dowry was obtained from the property of the third party, and what has happened with solvency is waiver of the right of the creditor and not acquiring the debt, and since divorce half of that right is returned, it should be returned to the payer's assets.

Keywords: dowry, third person commitment, condition, novation.

Introduction

If paying the dowry is accepted by a third party, no doubt his commitment or guarantee is acceptable and if not accepted, dowry will be paid from someone else's property, and his commitment is without effect. So if accepted, he becomes committed, and should carry out his commitment to fulfill that promise and if not, it can be acted in accordance with Article 237³ of the Civil Code, and if force were not effective, in accordance with Article 239⁴ Civil Code, the obligee (the wife) has the right to terminate the contract related to dowry, but if the husband or someone else performs the commitment, the right to terminate is void. However, if not performed, terminating the contract related to dowry no loss is incurred on the marriage contract. The abolition of the marriage is marital separation and termination. Abolition of the marriage affects the payment or non-payment, and also the amount of dowry.

Tools to abolish marriage are: 1. Termination, 2. Divorce, 3. Death, 4. invalid termination.

If the stipulation is in the form of dowry payments by a third, according to Article 246 of the Civil Code provides: "If the transaction is terminated by annulment or upset if it is revoked by the way ...". To of cancellation of marriage, the stipulation is invalid. So in this case, the party shall be exempted from payment of dowry and dowry payments are due to be paired. Terminate the contract will be sealed in different states, pursuant to Article 1101 of the Civil Code if the marriage dowry is entitled to terminate the contract before the woman is not sealed, unless the

³Article 237 of the Civil Code: "If the condition is positively or negatively is stipulated on the current condition of the contract, the person who is committed to do it must do and in case of violation of the rule, counterparty can demand for obligation to make provision."

⁴Article 239 of the Civil Code: "If the conditional mandatory and conditional action is not possible to do conditional work, such acts could not be further from the fact they make the other party the right to terminate transaction."

reason for cancellation is impotency, After nearly certain kind of dower if the wife is entitled to all but seal is not specified if the woman only if the person would be entitled to dowry.

The impact of third-party to terminate the contract commitment, we can say that according to Article 733 of the Civil Code and Article 708 of the draft law on the liability issue, ruling raised the issue with vague wording that is possible because of the unity of the criteria applied in the third commitment. If the buyer transfers to a third party pays to the seller give the buyer or seller pays the money to pay someone else, then for breach of contract of sale, about the effect of the termination of the sale in the remit of the authors there is disagreement.

On this issue there are two views:

- 1 .The transfer is subject to sale, and any transaction to be dissolved because it follows the money also.
2. The draft contract is independent, and it should not be considered subject to sale, transfer accuracy is sufficient for the contract of sale at the time of its conclusion is correct until the functioning edema transferor by a trickster check, Crown annulment of the sale of gas money order and transfer of debt after vilifying shops emitter dissolution money order It will not have.

Because the effect of cancellation does not affect the future and the past to destroy the transfer. The first opinion is acceptable because the function is often dependent on their own.

The effect of divorce on third party obligation of:

Rhythmic is a permanent marriage ends in divorce, according to which, depending on divorce takes place before or after the occurrence of stewardship. Provisions of dowry payments are also different. If after the close if divorce occurs, the woman is entitled to the entire dowry, if divorce occurs before the woman is entitled to half the dowry is near (Clause 1092 BC).

And if all received must be refunded half of it. In accordance with Civil Code is also considered Shi'a jurists, with the explanation that the woman was married at the same time, undermining all seal products, it has achieved near total seal the property is located.

It should be noted that a divorce before the close, the party is obliged to pay half of October or September?

Of course, in the third and couples have concluded an agreement, if it be noted that, even assuming that before the divorce, he is obliged to pay the stamp autonomy principle requires that the state party is obliged to pay the dowry.

The death of a third party commitment:

If the death occurred after intercourse, the woman is entitled to all seals, the outstanding debt is to be paid and the legacy pair. In the third commitment to pay dowry, he must pay a dowry to the woman.

If that happens, if the death occurred nearby, jurists believe that the seal is not half the woman has the right to demand it all. But the people are allowed to split-half dowry.

In contrast to those who believe the word is proved, it can be said that the realization of marriage, the couple is sealed in debt and is obliged to pay it all to his wife because divorce achieved only if and not near half of October comes to men, so in case of death, divorce has not taken place, then not return half of October.

Believes lawyers are arguing that the proof of dowry death should not be compared with the divorce because of the provisions of Article 1082 of the Civil Code, is well on the woman after marriage, a certain kind of dower owner. And the provisions of article 1092 of the Civil Code on extradition half of October for divorce before nearby, and should not be limited to the same.

If the party is committed to pay, and his feet not be included couples to damage his commitment as a couple, is obliged to pay the dowry. It's about death but about the couple and the woman dies, dowry among his wand that is inherited, and they are entitled to claim.

The effect of nullity of marriage on the third commitment:

If you lack one essential condition of the existence of barriers to marriage, marriage is annulled, it indicates that no legal relationship between the parties is not created, such as the inventory is not created and does not work well because the contract void the law does not exist. In the event

of nullity of marriage, if intercourse has not been done does not belong to the wife seal. About 1098 BC article stipulates: "If the marriage was void, whether permanent or temporary, and is not near a woman and if the seal was not entitled to restitution man can make it." But the nullity of the marriage dowry does not have any effect. Because there are stamping accuracy is based on the guarantee dowry had been discovered, there is no stamp and transaction-based warranty was void, then the warranty will be void dowry, following dowry.

According to Article 1099 of the Civil Code on marriage and the corruption of ignorance woman near, women will be entitled to, according to what was said, the nullity of marriage and October, the warranty is void if it is invalid, whether party We can not guarantee the payment of wages for example in the case?

If the toggle, stamped specified in the marriage contract is undertaken, the nullity of the marriage and consequently the invalidity of October, guaranty contract will be void and obligation to go guarantor, and the reason for re-employment obligation In the case of 1099 AH BC does not exist.

So dowry responsible for payment referred to in Article 1099 is BC couples or a new party that will takedowry. But if stipulated in the marriage contract invalid, even if that third party will be obliged to pay Regulation, according to the principle of party autonomy and implies explicit consent provisions, an independent obligation of marriage and October, and the third is obliged to paydowry. Because in terms of survival and decline is not related to the main contract and absolute commitment third man has been committed for each situation. And only a certain kind of dower is not obligated, so also is responsible dowry.

Moreover, the legal provisions for the common thread (third commitment dowry) provisions are not expected, therefore, must be withdrawn by reference to practical principles of surprise and because it is the task of instances of doubt, and doubt is in the presumption of innocence, channel assignment, with the presumption of innocence will not have third party liability and obligation to go he will be responsible for paying only a couple of dowrywill be provided for in Article 1099 BC.

If the third-party commitment to pay the dowry in the form of contracts or conversion obligation of or commitment to payment by the third, the cause is false, dowry and marriage will not have any effect on the general rules concerning contracts concluded by the ruling party, and with invalidity this commitment will go a third party and will be responsible for dowry to the couple.

Conclusion

Third commitment involves numerous legal effects that the works in the dissolution of the marriage, was investigated and the result proved that:

If you operate a third of their commitments and pay the dowry, but before the divorce is located near to, or for another reason women are responsible for half or full dowry, whether third party or freewill is paid dowry, dowry must be returned to a third person, because he is out of the property.

If the marriage is dissolved due to the death of one spouse, even if they occur before the outbreak of stewardship, the third of October will be required to pay as dowry for divorce before the split-half and gave up the feet.

If the marriage is dissolved due to termination or invalidity; if the third commitment in the form of guaranty contracts or money or become indebted to credit commitment, or placed in a stipulation with the dissolution of the marriage, is the third. But if the third commitment in the form of a separate contract of marriage is concluded, there can be terminated under certain circumstances or nullity of marriage, the party is responsible for paying stamp.

References

The Holy Quran

- Ansari, M., Mohammad Ali Taheri, an encyclopedia of Private Law, Volume I, published by the altar to think, printing, Tehran, 2005.
- Consistory, N, Lessons from certain contracts, the first volume, Treasure of Knowledge, Fourth Edition, 2003.
- Consistory, Nasser, family law, publishing holding company, Fifth Edition, 2002.

- Ebrahim, A., upon payment of the stamp by third marry, Journal of Civil Rights, Volume 3, Issue, 2015.
- Gray, Abu Jfrmhmd bin Hassan, Alkhlaf fi Ahkam, Volume IV, Islamic publishing office of the Society of Teachers of Qom seminary, first edition, 1407 AD.
- Gulpaigani, MR, BlghhTaleb, catechism Assembly, Volume II, Issue 460 and 472.
- Hakim Hassan, seized AlrohAlosqy, Volume 13, Islamic Publications Office, 1416 AD.
- HurrAmeli, Mohammed ibn Hasan, suites Alshyh to study Sharia issues, Volume Twenty-First Century, printing, al-Bayt Institute is 0.1418.
- Imam, Hassan, civil rights, four volumes, published twenty-first Islamiyah Publications, Tehran, 2011.
- Khoi, A., MinhajSaaliheen, Volume III, Nshralmdynh Science, Qom, 1402.
- Mohaghegh,D, Mostafa, legal study of family law, marriage Vanhlal its ninth edition, Publishing Center of Islamic Sciences, 2003.
- Najafi, Mohammad Hassan, Jvahraklam Fi religions as Islam, Seventh Edition, Volume 43, DaralhyaaltrasArabi, 1990.
- SeyyedRuhollah, Mousavi Khomeini, Tahrir, Volume II, First Edition, Qom, House of Wisdom Institute Press, 1989. p. 22.
- Taghizadeh, Ali, Seyyed Ahmad Mousavi, warranty dowry, Journal of Law, No. 29, twelfth year, the summer of 2011.
- The second martyr, Zine el Abidine Ben Ali, AlrvzhAlbhyh Fi Allmh as Aldmshqyh, Volume II, Tenth Edition, desktop Altab ALALAM House Islamic center, Qom, 1418.