



QUID 2017, pp. 2899-2903, Special Issue N°1- ISSN: 1692-343X, Medellín-Colombia

THE EFFECT OF TIME AND PLACE ELEMENTS ON EVOLUTION OF COUPLE' LEGACY IN IRAN LAW AND ISLAMIC JURISPRUDENCE

(Recibido el 23-05-2017. Aprobado el 27-07-2017)

Seyed Mohammad Sadri *
*Associate Professor of Law,
Department of Law, Payam-e-
Noor University, Tehran, Iran.*
**Corresponding Author*

**MohammadReza Nabizadeh
Arbabi**
*PhD candidate of private Law,
Department of Law, Payam-e-
Noor University, Tehran, Iran*

MohammadYar Arshadi
*Assistant Professor of Law,
Department of Law, Payam-e-
Noor University, Tehran, Iran*

Heidar Amirpour
*Assistant Professor of Law,
Department of Law, Payam-e-
Noor University, Tehran, Iran*

Abstract: Possession and ownership instruments are obtained from Islamic sharia and Iranian civil law which one of them is heritage. Among Islamic verdicts, heritage is derived from couple assets and this specification is derived from followers of Imam Religion attributed to innocent imams. According to it, couples are not benefited from all properties and shares.

The findings show that some of verdicts attributed to narrations of imam are derived from special time and place situations. The importance of couple' deprivation is stated that the couples shall be remarried after obtaining their share and caused to enter third party to their life. During current century, deprivation of the couple in the heritage mode is confronted. The inferential is that the time and place contingencies (era for forming Islamic government) was regarded as effective factor and this reason can enable to remove society' needs so that article 946 of Iranian civil law confirmed it.

Keywords: Couple' heritage, Judgment, effect of time and place, social situation of women

1. INTRODUCTION

According to dominant view of imam jurists, the couple is not obtained from sum of heritage (Sabzevari, 1423, volume 2, p 835, Shahid Sani 1413, volume 13, pp 185, Naragi, 1415, volume 29, p 359). Meanwhile, other Islamic religions believe that the couples share from all heritage. Some of followers of Imam are firm which is regarded as consensus (Sabzevari, 1423, volume 2, p 835, Shahid Sani, 1413, volume 13, p 185, Naragi 1415, Volume 29, p 359, Hosseini Rouhani, 1412, volume 24, pp 389, Najafi 1988, volume 39, p 207, Bahrol Olum 1983, volume 3, p 81, Tabatabaee 1412, volume 12, p 581). The difference is that some of religions are not inferred to Koran verses in inferring legal judgments and because of similarity in quality of shares for couples, deserved them as heritage and in other religions, as well Koran verses, other narrations are derived and based on it, some of couples are deserved it.

Today, contemporary jurists believed it in terms of noble narrations and stated that the couples are benefited from heritage.

Current thought was effective and conformed to Iranian policy maker in regard to change of quality of heritage so that article 946 of Iranian civil law given having children, shall deserve woman as one eight part of heritage in the case of death of husband.

The current variation is derived from theory of contingency effect for time and place. Doubtless, this theory has strong basis which could resists against well-known narrations and took it.

Quality specifications of couple' heritage law and its evolution is that in the legal basis, the couple is derived from heritage and then as well evolution process, social comprehension theory is accepted and the effect of time and place is considered. Following completion of discussions for time and place and its symbols, evolution theory shall be pointed in Iran' law.

2. Judicial basis of Couple' heritage

In Imam Jurisprudence, explanation resources like narrator and intellectual reasons consist of Koran verses and narrations. Koran verses are regarded as the first explanation sources which state quantity of heritage and the narrations are named as Imam legal sentences.

3. First: Holy Koran

Holy Koran states the couple' heritage in verse 12 of Nesa Sura.

The important points in Nesa Sura are:

1-The portion of couples in the event of having one children as one fourth of heritage and half of second child

2-The portion of the couple in the event of having one eight and in the lacking having children as one fourth

3-Couple heritage from their properties

4-The couple heritage after acting in terms of heredity and tribute

4. Second: valid narrations from innocent imams

The documentary to valid narrations from innocent imams is regarded as singularities of Imam religion, the narrations are regarded as evolution narrations and they are regarded as one fourth for portion of heritage but which couples are derived from heritage and which properties are regarded as it is determined by imams and the jurists regarded different narrations for it.

The origin of dispute for Imam in evolution mode showed that the inferential is regarded as evolutionary section and the couple can own it.

Some of them believed that the narrations of intangible properties contrast with Koran and this opposition is not mimic and one can mimic it with accurate news. This opposition is same as string and power opposition with Koran because if the couple doesn't heritage, their share shall be less. Thus, the narrations can be limited and its value is close to narrations that is the couple shall be equal. The narrations maintain fee of contract but it shows quadruple and fourth of transaction and this mimic is on Koran verses that is the total reasons shall be true on it (Hashemi Shahrud, 2007).

From total narrations pertain to quality of couple' heritage, there are five insights among imam jurists:

First narration: Ebn-e- Joned Baghdadi well-known as Kafi stated that the insights based on absolute deprivation of couple from heritage.

Second insight: Sheikh Mofid: this insight is based on absolute deprivation of the couple in evolution from properties in fee and price

Third insight: Seyed Moreza: this insight is based on couple deprivation of the couple from price of land

Fourth insight: Sheikh Tousi: this insight is based on obtaining children of the couple and in the event of having children, the properties are regarded as main assets and deprivation is done.

Some of jurists believed that Seyed Morteza insight is precedent upon others so that this insight is among all narrations and verses. In one side, it advocates on issuance of verses and in other side, it can be regarded as finite reasons and Seyed Morteza theory prevents from two factors and if the couple doesn't take heritage, thus, her share is less than total fee of asset (Hashemi Shahroudi, 2007).

5. Third: determination of heritage deprivation of the couple

The determination of the couples in the event of deprivation from heritage is stated when the couple give their assets to others and it causes conflict with others and the scale of conflicts is important.

6. Justice of couple in judgment of legal choice

The justice and faire of the couples is due to desperation of legal judgments like transferability.

The legal judgment of heritage is not theoretical but it has practical choices because of the legal right is accurate, thus, this judgment shall be determined as for human arbitration and it has legal subjects whereas, sharia judgments are not valid verdicts.

In the event of proving, the most important concept is waiving (Khansari, 2013, 107). Since law is a special credit which its effects are on weakness, thus it shall not be imagined for the owner (Ameli, volume 2, p 43, Khansari 2013).

Imam jurists have no single insight on to be legal form and the referral to dispute is specification of a judgment. According to it, some of subjects are considered and one of the cases which are on dispute is heritage discussion between couples and the question is here is temporary contract is for dispute and the children can obtain it. This is regarded as sharia judgments and was not explained in current era but it means permanent mode and it is regarded as sharia judgments which belongs to heredity.

After that, each of heirs have another right including determination of shares, transferability, waiving, and the powers which are given to others and some of them are void, so that it is obvious that right is regarded as prevention from duty and they are regarded as inferential modes.

In Imam Jurisprudence, it is so strong to be single unit as heritage and it is claimed that none of narrations state determination mode of heritage in Imam Jurisprudence and it is derived from heritage discussion.

7. Effectiveness of evolution for couple heritage in Iran law from time and place point of view

Legal judgments are regarded in the case of sharia and it is signified that time and place elements can be regarded as sub-elements for it.

Each legal verdict is issued in order to determine real and legal facts which is for subject. Thus, the main subject of each judgment is determined in current era and it is seen in another mode.

Circumference plays vital role in expressing insights and it is seen that judgments of Mojtaهد from urban takes civil form and Arabian too (Motahari, 2016).

These differences are due to effectiveness for judgment in place and time and discussion the environmental situations in the era of time and place is so effective.

It is necessary to aware from place issuance and the mean of issuance place is field and sum of situations in which different cultural, social and political situations are issued so that the owner stated its purpose with it.

8. Social effective variations in evolution of couple in Iran law

Changes of Islamic society are derived from material and spiritual factors in the shadow of government by Islamic noble thoughts and it has two basic specifications like Islamic and revolution in which all people participate.

Today, women of Iranian society lay vital role in family management in the shadow of social, political, economic, and educational and research fields and all practitioners like academic, Islamic council, ministries, and management of economic institutes are playing role. This same place causes women are regarded as emerging phenomena.

Woman plays important role in society in which men locate and it is not mean woman is employed where is out of her emotional, bodily power.

Women participate to obtain their assets as direct and indirect, direct participation means the couple have special employment and income which supplies costs of life. Thus, whatever they take is on possession of society and causes there is equality between couple.

Another mode is that indirect participation in which the presence is for Iranian women and the policy and economic thought is that the couple play role in families and are regarded as effective factor in obtaining graduation and the best reasons are that in all human societies, from race, culture and language, it is regarded as a well-known mode.

Thus, in same situation, although, there is deep relationship between heritage and couple in the shared time of life but this not caused this insight is converted to difficulty for couple.

The origin of the difficulty is that the couple is derived from shared heritage and this theory is not valid for couple.

9. Relationship between time and place and evolution of heritage in Iran law

The couple heritage discussion is suitable by time and place situations and will change.

In couple heritage, there is difference between quantity and quality of them.

The Koran verses emphasize upon dispute on quality of fourth, half and fee of transaction but the narrations pointed the differences and the reason is that role of women in graduation and obtaining income is so vital and it cannot be attributed to management role in family.

Current situation of women in society states that in legal verdicts, there is close relationship between income and legal shapes and social responsibilities and many men regarded it as presence in all fields after victory of Islamic revolution. Women developed society with their powers and this new insight caused Islam is regarded as a great religion and mental and spiritual mindsight changed and the discussions like couple heritage and defect in religion, marriage, maintenance and other subjects derived from gender and lacking social effectiveness are derived.

It is regarded as legal duty to pay attention to situations of time and place in which their mechanisms are derived from society and issued in terms of legal and judicial insights and inferential modes.

Time and place situations are regarded as two effective factors in issuance verdicts. In terms of it, current situations of society shall be discussed. Since jurist shall know subjects and shall not confronted with difficulty, thus, in order to solve problems, the subjects shall change and the current situations dominant on society shall be changed in terms of place and time contents, so that the jurist infers verdicts but his dominancy on personal life and mindset shows how mental background can be effective in his judgments and different concepts like social, government and expansion of domain can be added the situations.

Placement of time and place situations in Iran legal system shall not be found otherwise with establishment of Islamic government and there are different symbols for banking, stock exchange, intellectual ownership, fee of blood and organ.

Islamic law is not for certain words but it has vast domain and contains deep concepts like human and other words and can negate eternity. Thus, by said reason, each of steps shall be used as if human can surprise it.

10. CONCLUSION

The narrations for deprivation the couple from heritage are issued from Imam Bagher and Sadegh. In narration which is issued by Amir Momenin, there is no explanation on deprivation of the couple.

After death of prophet, the discussions like belongingness is stated in heritage and was confronted with it and thus, there is no confrontation with it.

Lacking reflection of narration of Amir Momenin is attributed to acceptance of couple and lacking said narration so that it is regarded as a same symbol for it.

Lacking deprivation of the couple is regarded as political aspect and it contrasts with aims of another Calipha as for Imam Sadegh and Bagher avoided it.

Determination of deprivation of the couples can be regarded for heritage of land and home and stated that the couple can share their assets and the imagination is that the heredity can be regarded as a main factor for it.

The narrations were stated by innocent Imams were on questions and answer of Imam was suitable for time and place thus, it was shaped in specified framework and the lands were not as personal assets but it is in terms of price of land, and price due to right, this price is due to lands which specified in the heritage and the identities can use it in terms of ownership and the price is caused lacking heritage for the couple.

Comprehension of social situation of women is different from current era. The comprehension is due to their role in society and it can be regarded as their limited ability so that Imam regarded it.

Time and place elements are on social, cultural, research, economic abilities and the quality shows heritage of couple, as if this insight shall be valid by Koran.

REFERENCES

- Al-Zubidi, Mohd al-Din al-Wasati (1205). Taj al-Ursu Jahar Al-Qamus, Al-Muhagh-i-Al-Shiari, Beirut, Dar Al-Fekr.
- Amali, Mohammad bin Maki (1400 AH). Al-Qa'wat al-Fawa'd al-Fahl al-Fahl al-Fahl al-Faisal and the Qur'an, Qum: Menshurat al-Mufid.Jald2. 43.
- Ansari, Morteza (1415 AH). "Otesaya and Al-Mawariath", Qom, Bagheri Publications
- Ardebili, Ahmad (1426 AH). "Assembly of Al-Faabed and Al-Burhan", Qom. The Society of Teachers of Qom Islamic Seminary, Volume 14.
- Bahr al-ulum, Seyyed Mohammad (1404 AH). "Balqaat al-Faqih", Tehran, Ministry of Foreign Affairs of the Republic of Macedonia, Volume 3, p. 3.
- Haeri, Seyyed Kazem (1423). Fagh al-aghud, al-ta'ba al-ta'ayniyah, Qom:
- Hashemi Shahroodi, Seyed Mahmoud, (2007). Islamic Fate of Ali (as) (Persian language) - Wife's inheritance of immovable property - No. 49, pp. 3-61
- Hosseini Rouhani, Seyyed Mohammad Sadiq (1412 AH). "Fiqh al-Sadeq," al-Ma'miah, Volume 24, p. 389
- Ibn Muhammad, Jamal al-Din Muhammad bin Makram (1417 AD). Lissan al-Arab, Beirut, Dasadar, Vol. 15.
- Jabayi, Ameli Zainuddin Ben Ali (1413 AH). "Masalak El-Fahmam", Qom, Encyclopedia of Islamic Studies, Vol. 13, 185.
- Khansari, Aghamoussi (1434 AH). Qom: Society of Teachers of Qom Seminary, Islamic Publications Office, Volume 2, pp. 107.
- Khomeini, Ruhollah, (1385). Sahifeh Imam, Tehran, Institute for the Setting up and Publishing of Imam Khomeini Works, Vol. 20.
- Korki (Mohaqiq Thani), Ali ibn Husain (1414 AH). Comprehensive textbook of Al-Qawa'id, Qom, Al-Al-Bait Al-Altat Institute, vol. 13.
- Monotheist, Mirza Muhammad Ali (1417 AD). Mesbah Al-Safahahi Fillamalamat (edited by al-Mukhaq al-Khawi), Qom, Ansariyan Publications.
- Motahari, Morteza, (1395). Ten Speeches, Qom, Sadra Publications, p. 99.
- Mughniyeh, Mohammad Jawad, (1404 AD), jurisprudence of al-Amam Ja'far al-Sadeq (AS), Beirut, Dar al-Jawad, Dar al-Ta'jir al-Jadid.
- Najafi, Mohammad Hassan (U 1430). Joahir Al-Klamfi Description of Shirazi al-Islami, Beirut, Dar al-Hiala'at al-Arabi, Vol. 39, p. 207
- Naraghi, Ahmad bin Mohammad Mehdi, (1415 AH). "Documentation of Shi'a Fiqh al-Shariah", Mashhad, Al-Al-Bait (AS) Al-Altat Institute, Vol. 29, 359.
- Pommula, Mohammadsham Wire (2011) Islamic Law Research Journal - Rights and Immigration in Imamieh University, Tehran, Imam Sadegh University, Volume 12, Issue 1.
- Sabzevari, Mohammad Baqir (1423 AH). "Fahlah al-Khamam", Qom: The Society of Teachers of Qom Seminary, Islamic Bookstore, Mortaza Al-Vezami Araki's Research, Vol. 2, p. 835.
- Sadr, Seyyed Mohammad Baqer, Al-Jaythad and Hayyat (Al-Qa'at al-Mustaqbalat al-Jayrkata al-Jaythad), the center of Al-Ghadir, Qum, Bey.
- Shamseddin, Mohammad Mehdi, (1412 AH) Philosophical Society of Al-Sisiyal Islami, Beirut, Almoody Al Dawlah.
- Tabatabaee, Seyyed Ali (1412 AH). "Riyadh al-Masaleel", Qom: Society of Teachers of Qom Seminary, Islamic Bookstore, Vol. 12, p. 581.
- Yazdi (Tabataba'i), Seyyed Mohammad Kazem, (2006) Mohsen Mohammad Keshaf, and Tehran: Encyclopedia of Islam Elham - Qom: Dar al-Alam