payment. Furthermore, the couple could also previously agree upon a lower percentage of compensation, whereas more than 12 percent of compensation was not allowed. After the Islamic Revolution, however, the Guardian Council announced the payment of such a compensation contradictory to the Islamic jurisprudence, whereas banks applied specific regulations in this respect.

At present, the payment and the reception of compensation for delayed payments is done in accordance with the amendments made by the National Expediency Council, which are consistent with the Islamic jurisprudence. Contrary to the past, the compensation percentage is not a fixed 12% per year now, but it is calculated with respect to the Central Bank's index .

As explained above, the payment of the marriage portion at the current rate is different in its nature from the compensation for a delayed payment. Generally, the compensation for a delayed payment is a compensation for a delay in the fulfilment of an obligation to make a payment in cash only. By contrast, when the obligation is not to be fulfilled in cash, as for example building a house, the couple can agree with each other on the compensation for the delayed fulfilment of the obligation. They can, for example, agree that if the construction of the house is not completed within a year, the husband has to pay the wife a defined sum of money as a compensation for each day of delay. From this point of view a compensation for a delayed payment is equal to the compensation for a delayed fulfilment of an obligation. This compensation includes, as well, the marriage portion that is to be paid at the current rate, which is demandable from the husband as the debtor. Thus, these two are not contradictory to each other.

Some people are inclined to believe that demanding the payment of the marriage portion at the current rate, introduced by the theory, is equal to usury. Considering however, what jurisprudential sources define as usury, it is obvious that the payment of the marriage portion at the current rate is not usury.[1]

There are two kinds of usury. One is transactional usury, which is related only to deals with measurable and weighable things. Thus, it has nothing to do with money, because money is neither measurable nor weighable. Neither is money, in fact, classified as corporeal property. The other is loan granting usury, which is related to loan contracts where the lender gives a certain sum demanding a larger sum in return. For example a person lends a person 10.000 tomans and asks for 12.000 tomans in return.

To sum up, it is obvious that the marriage portion cannot be regarded as a loan. Thus, it would be incorrect to regard it as usury.

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1) Shahid Thani: ***Sharh al-Lome,*** Vol.3, p. 437 ; Amely, Mohammad Javad: ***Moftah al-Keramah*** Vol.4, p. 502.

making the marriage contract, rather than being equal to its numerical unit of quantity. In other words, the husband is in debt to his wife a sum of money whose value is equal to the average value of the marriage portion at the time of making the marriage contract and whose transac- tional value is equal to that of the sum agreed upon at the time of making the marriage contract.

Thus, if the sum of money that the husband undertook to pay as a marriage portion twenty years ago, had the value of a car, it must have the same value at the time of the payment of the marriage portion, as well. Conversely, when the husband commits himself to convey a tangible property, such as 200 gold coins to his wife, he is acquitted of his obligation when be gives exactly the same number of gold coins. A question arises, however, whether it is, in such a case, possible for the husband to try to avoid paying out to the full his obligation that is calculated in accordance with a rise in the gold price.

As far as the marriage portion payable in currency is concerned, the same theory is the guideline, that is to say the husband has performed the obligation when he pays his wife a sum that has the same value and purchasing power as the sum they agreed upon at the time of making the contract.

Following the guidelines of the theory it is now clear that the regulation is valid not only for marriage contracts but also for all pecuniary debts. Regarding repayments on one hand, the jurisprudents have examined the continuous devaluation of money, deeming it necessary to find a clearly-defined way to calculate the sum that the debtor has to pay the creditor after the lapse of the time limit for the last opportunity to fulfil the obligation. Now, approximately ten years later, the jurisprudents are putting the theory of the payment for the marriage portion into practice.

On the other hand, the National Expediency Council elucidates the issue of compensation for loss and harm and other related expenses in clause 2 of the December 1997 amendment of several articles to the law on drawing a check, which was ratified in June 1997.

Accordingly, the loss caused by the delay of a payment must be calculated with respect to the inflation rate, announced by the Central Bank of the Islamic Republic of Iran, from the time of signing the check until the time of the recovery of the sum itself.

One might conceive that a payment of an extra amount of money to the wife is regarded as the compensation for the delayed payment, and point this out as a mistake in the theory. This is not correct, however. The fact is that to compare the compensation, presented by the theory, to what is generally considered as the compensation for a delayed payment, is an analogy without relevance, that is to say the two are not the same thing. Article 719 on the civil law procedure for the fulfilment of cash payments, required the debtor to pay 12 per cent annual compensation at the delay of a

without any sustenance or capital to live on. In the following chapter the so-called pecuniary theory is studied.

The Pecuniary Theory

The theory was first presented by Dr. Mahdi Shahidi in his lectures and then published in a book called *The Termination of the Obligations* in 1989.

Prior to commencing the study of the theory itself, it is first necessary to give a short account of the two kinds of properties, namely corporeal and incorporeal. The existence of corporeal property, such as a house or a car is tangible, whereas incorporeal property is neither concrete nor tangible. Nevertheless, the latter has acquired its value and credibility from the law, and is of particular value and importance to society.

The royalty of invention and copyright as well as money are classified as incorporeal property. Money plays a basic part in the economic relations of every society and has developed its current importance with times due to changes in social relations.

A short review of history shows that people in primitive societies were engaged in barter trade. They, namely, gave their commodity surpluses to other people in exchange for utility goods that they needed. In those days, commodities such as wheat, salt, and textiles used to play the part that money plays today.

Later, gold and silver coinage were used instead of utility goods to facilitate the transactions. As a result, money was regarded as corporeal property at that time.

After that, however, coinage was replaced by paper money, or notes, that were more easily carried and handled. Although the gold coin was replaced by paper money, it was still long after the invention of the paper money regarded as a mainstay of money. Consequently, since a certain amount of gold constituted the mainstay of paper money, money began to be regarded as corporeal. However, the mainstay of money in most countries are now mainly factors such as scientific and technological capability rather than the Treasury gold and jewellery. Therefore, it is not possible any longer to consider gold as real money and paper money as the representative of both gold and jewellery.

In sum, money in its modern sense is a credit based, invisible, transactional value whose numerical unit of quantity is only represented by notes. Moreover, its transactional value, is reduced with times or can only under exceptional circumstances increase. So, a 100- rial note, for instance, does not have the same value today as it had thirty years ago, even if it has preserved its unit of quantity.[1]

Knowing that money constantly decreases in its value, it is made clear in the pecuniary theory that the obligation of the marriage portion undertaken by the husband is considered performed only when the amount of money, paid out to the wife, is equal in its real value and purchasing power to what it was at the

1) ibid, No. 26, ch.11

parties agree otherwise.

In fact, the fulfilment of the obligation is not difficult in cases which relate to carrying out a certain task such as teaching a foreign language or handing over a possession of certain value, such as a car or a house. So, whenever the task has been carried out, the husband has performed his obligation. For instance, when a car with certain specifications is defined as the marriage portion, the husband will have fulfilled his obligation, whenever he submits a car with the same specifications to the wife. In this case the fluctuation of prices does not make any difference. As importantly , the husband is under all circumstances bound to submit a car to his wife as defined in the marriage portion regardless of the fact that its value has either been marked up or down in proportion to its value at the time of making the contract.[1]

However,when the marriage portion is payable in cash, a question arises whether the husband is accounted clear of the obligation by making the payment of the same amount as agreed upon at the time of the contract.

Until the ratification and appendage of the supplementary article, some of those committed felt confident of the fact that the payment of the marriage portion that was determined to amount to 100.000 tomans at the time of making the marriage contract, which the husband would pay the wife thirty years later, should be considered as the fulfilment of the obligation. To consider the matter in this way is illogical from two points of view . Firstly, what is presented here as the fulfilment of an obligation is not compatible with the definition given to it. Secondly, it is illogical to accept a payment at a time several years later, of the same sum that was agreed upon as the marriage portion at the time of making the marriage contract, as the fulfilment of an obligation.

In 1997, Parliament enacted some laws, especially on marriage portions payable in cash, in order to safeguard women's rights on jurisprudential grounds.[2]

According to the new law the performance of the obligation can only be regarded valid when the sum paid as the marriage portion is accounted in proportion to the changes of the price indices from the time of making the contract until the time of its fulfilment.

Behind the new law there is a theory, defining marriage portions payable in cash that has become a guideline for lawmakers to enact laws related to the marriage portion. The theory can be generalized to all pecuniary debts.

None the less, the lawmakers have first enacted laws related to the marriage portion due to its importance to people. These regulations are to safeguard women's rights which have been violated very much, especially when marriage portions payable in cash are concerned. It, namely, often happens that women are ruthlessly abandoned, after years of matrimonial life,

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1) Shahidi, Mahdi: ***Soghut-i Ta'ahodat*** No. 16 .

2) ibid, No. 26, Ch.11.

making permanent marriage contract, the legality of the contract is not affected, if the amount is not mentioned at that time. It can be determined at a later date (article 1087 C.L.). By contrast, a temporary marriage becomes invalid according to article 1095 of the law, if the marriage portion is not determined.[1]

According to article 1078 C.L. anything that has proprietary value can be assigned as the marriage portion. Since the woman becomes the owner of the marriage portion upon making the marriage contract, immediately after making the contract, she is entitled to ask the husband for the marriage portion. In other words, having concluded the marriage contract, the husband will be indebted to his wife in proportion to the marriage portion.

Generally, however, women can refrain from demanding their marriage portions only with the motive of showing affection , foreberance and compatibility with the prevailing circumstances. This is even the case when there occur family disputes that lead to divorce. The woman is inclined to accept the divorce without demanding her marriage portion.

As a matter of fact, social, emotional and mental factors do not nullify any fundamental right granted to the woman by the law, and the woman can demand for her marriage portion at any time.

Now, what happens if the marriage portion is payable in cash, or in currency in accordance with the supplementary article, and either the woman decides to ask for her marriage portion or the husband wants to make the payment of the obligation several years after making the marriage contract.

The article investigates whether the payment, at a later date by the husband, of the same amount of money as the one determined at the time of making the marriage contract as the marriage portion, acquits him of his obligation or not. In order to answer this question, it is necessary to give an account of in what ways the obligation is fulfilled and when the debtor is acquitted of his obligation.

The Fulfilment of the Obligation

As it is already defined, a marriage portion is a debt on the husband. In consequence, the man that owes the woman a marriage portion on the basis of the marriage contract, will be acquitted of his debt when he fulfils his obligation.

Generally, a marriage portion can either be in the form of a payment to be paid out or a task to be carried out. In either case the husband is freed from the obligation when he carries out the task or pays the specified sum.

In this respect article 277 C.L. states that the obligor is bound to carry out to the full what he has undertaken as well as to submit the due payment to the obligee unless the two

1) See the article in Persian by the writer, " On Marriage Portion And Its Role in Marriage", in Nedaye Sadiq, Winter 1376 .

The Evaluation of the Marriage Portion at the Current Rate*

Mrs. Abdollahian and Pahlavan

A supplementary article comprising of two clauses was appended to article 1082 of the civil law on Mordad 8, 1376. According to the article "the woman becomes the owner of the marriage portion and has full authority over it upon merely making the marriage contract ".

In accordance with Clause 1 of the supplementary article "when the marriage portion has been agreed upon in cash, it has to be calculated from the time of the contract up to the time of the payment in proportion to the changes in the annual price index determined by the Central Bank of the Islamic Republic of Iran ".

In the present article the evaluation of the marriage portion at the current rate and the legal nature of the evaluation, as well as the legal grounds and reasons for the supplementary article are discussed.[1]

General

The compilation of the Iranian civil law started in 1307 S.H. [solar Hijra year]. It is accounted as one of the best and most complete ones in the world. It is derived from the Imamieh jurisprudence and the law of some European countries, especially France. Moreover, the acknowledged opinions of the Shi'ite jurisprudents have been followed in the compilation of the laws that are directly related to the official religion in Iran, such as marriage, divorce, inheritance and will. Enacting laws for marriage, which are closely related to laws on family and genealogy, the civil law fully follows the religious laws, especially when the marriage portion is concerned.[2]

Thus, for example, the law considers the following two instances different in that despite the necessity to determine the amount of the marriage portion at the time of

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*) Written by Mrs Nazari

1) A lecture on the subject was given by the writer at Imam Sadiq(a.s.) University, Girls' College, on 7.10.1377.

2) Najafi, Sheikh Mohammad Hasan: ***Javaher al-Kalam*** , Vol. 11, p.5.

Shahid Thani: ***Sharh-i Lom'e*** , Vol. 5, p.341 .